
Small Business Administration
June 22, 2005

Size Standards Public Hearing

Condensed Transcript and Word Index
prepared by:

Ken Owen & Associates
801 West Avenue
Austin, Texas 78701
512.472.0880
kenowen@swbell.net

SMALL BUSINESS ADMINISTRATION
SIZE STANDARDS PUBLIC HEARING
DALLAS, TEXAS

BE IT REMEMBERED that on the 22nd day of June, 2005, the Small Business Administration's Size Standards Public Hearing came on for hearing before me, Sherry J. McLaughlin, Certified Shorthand Reporter and Registered Professional Reporter, at the Bill J. Priest Institute, 1402 Corinth Avenue, Dallas, Texas, from 8:34 a.m. to 3:39 p.m., and the following proceedings were held.

A P P E A R A N C E S:

Mr. Eric S. Benderson
U.S. Small Business Administration
Associate General Counsel for Litigation
409 Third Street, S.W.
Seventh Floor
Washington, D.C. 20416

Mr. Carl J. Jordan
U.S. Small Business Administration
Office of Government Contracting and
Business Development
409 Third Street, S.W.
Eighth Floor
Washington, D.C. 20416

Mr. Joseph O. Montes
U.S. Small Business Administration
Regional Administrator, Region VI
4300 Amon Carter Boulevard
Suite 108
Fort Worth, Texas 76155

Mr. John Bateman
U.S. Small Business Administration
Dallas/Fort Worth District Office
Area Director for Government Contracts
4300 Amon Carter Boulevard
Suite 116
Fort Worth, Texas 76155

Mr. Lavan D. Alexander
U.S. Small Business Administration
Dallas/Fort Worth District Office
District Director
4300 Amon Carter Boulevard
Suite 114
Fort Worth, Texas 76155

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P R O C E E D I N G S

MR. MONTES: I want to welcome all of you to the Dallas Size Standards Hearing. I just want to take a moment to introduce the table up front here for the benefit of everybody who may not know them.

Immediately to my right is Eric Benderson from the Office of General Counsel at headquarters in Washington. Karl Jordan from the Office of Size Standards at headquarters in Washington. John Bateman from our Office of Government Contracts here in Dallas. And the District Director for the Dallas District Office, Lavan Alexander.

My name is Joseph Montes, and I'm the Regional Administrator for the Small Business Administration, Region VI, which incorporates the states of Texas, Arkansas, New Mexico, Oklahoma, and Louisiana. I'm pleased to be able to open these hearings here today in Dallas.

I oversee the programmatic activities in those five states. Those programmatic activities consist of management, technical, procurement, and financial assistance to the small business community.

The essential mission of the Small Business Administration is to assist in strengthening the nation's economy by aiding, counseling, assisting, and

1 protecting the interests of small businesses.

2 Size standards is a fundamental issue
3 within SBA since it determines which businesses are
4 eligible for SBA's assistance, small business
5 preferences, and federal contracts, and small business
6 assistance for many other federal programs and
7 regulations.

8 The purpose of today's hearings is to hear
9 from you on issues pertaining to size standards, in
10 particular on ways SBA might simplify size standards and
11 other ideas to make size standards easier to understand
12 and use.

13 The testimony presented today in today's
14 size standards, along with other comments we received to
15 the December 2004 Advance Notice of Proposed Rulemaking,
16 will be used to help SBA develop new proposals to further
17 those objectives.

18 We're also taking the opportunity of these
19 hearings to seek the public's views on whether businesses
20 majority owned by venture capital companies should be
21 allowed to participate in the Small Business Innovation
22 Research Program, SBIR.

23 On behalf of myself and the administrator,
24 Hector Berreto, we thank you for taking time out of your
25 busy schedule to participate in this vitally important

1 effort. I'll now turn the hearing over to Eric Benderson
2 of Office of General Counsel and -- to go over the ground
3 rules and -- for these hearings. Thank you.

4 MR. BENDERSON: I'll be the moderator
5 today, and we have quite a few speakers, so we're going
6 to try to limit this to five minutes per person at the
7 most. I apologize. I'm sure many of you have taken the
8 trouble to come here and to participate, which is very
9 helpful to us and to the small business community in
10 general, and have put a lot of time into this.

11 But I will have to try to strictly enforce
12 that, because we've got over 70 speakers, and this
13 proceeding will go from 8:30, roughly, til 5:30, and so
14 that we're trying to fit all the speakers into the time
15 allotted.

16 As Joe indicated, this is a public hearing
17 conducted by the Small Business Administration pursuant
18 to the Notice of Public Hearing published in the Federal
19 Register on May 12th, 2005.

20 At this point, let me just introduce or
21 mention a couple of other people. Paul Stone, standing
22 up there. Why don't you raise your hand, Paul. He's our
23 procurement center representative, and he's agreed to
24 take the blame for anything that goes wrong at this
25 hearing.

1 And Lavan Alexander, the handsome
2 gentleman standing up, is our District Director. And we
3 won't forget John Bateman, who is the Area Director for
4 Government Contracts. And Carl's already been introduced
5 to you.

6 The ground rules -- oh, let me mention --
7 let me first thank James Barrish for arranging this at
8 this facility. It's really, really lovely. The facility
9 should greatly enhance the proceeding. And Fran Smith,
10 who is at the table to register.

11 So if you haven't signed in already,
12 sometime during this proceeding, why don't you just go
13 out there and sign in. And I'll be saying that
14 periodically. We'll take a break for the purpose of the
15 court reporter every hour and a half.

16 Getting to the ground rules, your
17 testimony will be recorded by a certified court reporter,
18 as I mentioned. When you get to the podium, state your
19 name and organization for the record.

20 And by the way, given the same rules,
21 there's going to be 11 of these hearings, and so we're
22 giving the same instructions so no -- all of them are
23 treated fairly in the same way.

24 Each presenter will be allowed five
25 minutes for an oral presentation. I will advise you when

1 your time is up, and you should conclude at that time.
2 If you need a few more sentences, that's fine, but like I
3 said, we'll just have to move it along.

4 When you've finished your presentation,
5 give Anna Marie Rush, from our regional office in Dallas,
6 your material with your name and organization. We're
7 going to make that part of the administrative record.

8 Members of the panel up here may ask
9 questions of a presenter at the end of his or her
10 presentation to clarify or further explain the testimony.
11 The panel will not respond as to whether it agrees with
12 the views or position of the testimony, and the purpose
13 of this hearing, really, is to get your views, which we
14 will consider when we revise and redraft the size
15 standards.

16 A discussion of issues unrelated to size
17 standards will be stopped. Members of the press are
18 asked to identify themselves and sign in on a separate
19 registration sheet. Fran Smith has that. And press
20 activities, including requests for interviews, should be
21 coordinated with the press information officer, which is
22 Anna Marie Rush again.

23 And, hopefully, everybody will be
24 courteous and -- while others are testifying. And turn
25 off your pagers and cell phones, which I'll do myself

1 right now.

2 So with that little introduction, why
3 don't we begin with the first speaker, Todd Crickmer, the
4 vice president of De Leon Technical Services.

5 MR. CRICKMER: Good morning. My name is
6 Todd Crickmer with De Leon Technical Services from
7 Austin, Texas. I appreciate the opportunity to be here.
8 Thank you.

9 I didn't realize I was going to be first.
10 Always leading, I appreciate the opportunity, but anyway.
11 De Leon Technical is a small business. We have
12 approximately -- we're a federal contractor for primarily
13 the defense department. We have 150 employees. We
14 operate in about seven states with annual revenues of
15 about \$5 million.

16 I know that may seem large to some of the
17 small businesses here, but believe me, we are very, very
18 small. There's only two of us in the corporate office.
19 Actually, today, there's only one of us in the corporate
20 office because I'm here.

21 My assistant and I travel among all the
22 job sites. We only have one laptop computer, which we
23 share. And that's why I don't have it today, because
24 she's using it. So we truly are a small business, even
25 though 150 employees sounds like a lot, and seven job

1 sites sounds like a lot, and \$5 million sounds like a
2 lot. Trust me, we're a small business.

3 We believe that small business is the
4 backbone of American society and the foundation of our
5 free market economy. De Leon Technical, along with
6 thousands of other small businesses provides the federal
7 government an incredible value of hard work and integrity
8 and innovation that we don't believe big business can
9 provide.

10 The proposed size standard of 500
11 employees or more would effectively eliminate or
12 certainly be detrimental to businesses my size, as would
13 the grandfathering. If it was wrong when it was done,
14 it's still wrong today. And we are opposed to the
15 grandfathering provision.

16 Also, I have a concern about the venture
17 capitalist. In effect, that appears to me to be a
18 back-door opportunity for large business to, in effect,
19 own or control a small business. I understand the need
20 for capital. I appreciate the need for capital
21 immensely, but 51 percent ownership or greater is, in
22 fact, control and, in fact, is a large business.

23 What we propose or suggest is the -- not
24 relying strictly on the number of employees. Size
25 standard, again, I'm past the 100, but I'm way, way under

1 the 500. So the use of 100 would be detrimental to me.
2 And, again, believe me, I am a small business.

3 Calculating the size standard based on the
4 number of employees could be skewed by the use of
5 part-time employees or the utilization of temporary
6 employees. It also is difficult to calculate if you use
7 the full-time equivalent. Of course, that would
8 introduce another calculation concern.

9 I suggest -- or we suggest the use of the
10 receipts-based method as has been done in the past. We
11 think it's more appropriate for a service-type contract,
12 which we are. We, in effect, are simply replacing civil
13 servants on the federal payroll, and so the number of
14 employees would not be meaningful to the size standard in
15 our case.

16 Receipts base is simpler to calculate.
17 It's easier to verify. Tax records, for example. And
18 the use of employee-base size standards actually, in a
19 sense, has a way of reducing the number of employees
20 because a business may actually not hire people in order
21 to stay under a certain size standard if that was the
22 case.

23 We suggest an either/or system: Either
24 number of employees or receipts based, whichever is
25 smaller. And, finally, I do strongly suggest the SBA

1 consider a standard higher than 100, because that would
2 certainly be detrimental to a business of my size and
3 most of my competitors. Whereas I am way over 100
4 employees, but I am certainly still a very, very, very
5 small business.

6 MR. BENDERSON: Well, thank you very much.

7 MR. CRICKMER: Thank you. I appreciate
8 it.

9 MR. BENDERSON: Next we'll hear from Andy
10 Ellard.

11 MR. JORDAN: I have a question, please.

12 MR. BENDERSON: Oh, I didn't realize you
13 had a question. You can't leave now.

14 MR. JORDAN: Perhaps you're not aware, but
15 the SBA 500-employee proposed standard, I assume you're
16 talking about wholesale contracts.

17 MR. CRICKMER: Yes.

18 MR. JORDAN: The 500 employees that was
19 proposed was withdrawn as was everything else.

20 MR. CRICKMER: Okay.

21 MR. JORDAN: So because of the result of
22 the comments --

23 MR. CRICKMER: Great.

24 MR. JORDAN: -- and the grandfathering
25 that you mentioned, SBA has not proposed grandfathering.

1 SBA has never proposed grandfathering. I don't know why
2 that discussion's out there. The only reason that's on
3 the table is because when we had the proposed rule last
4 year, many commenters brought it up. So in all fairness
5 to them, as well as to you, we have to ask what are your
6 comments now. And that's why we raised the issue.

7 SBA has not proposed grandfathering. It's
8 an Advance Notice to Proposed Rulemaking. Upon
9 evaluation of the comments that we received and these
10 hearings, we will decide if we're going to do anything at
11 all. But that was strictly brought up by others as a
12 response to our proposed rule.

13 MR. CRICKMER: Excellent. I appreciate
14 it.

15 MR. JORDAN: But there has been no
16 proposal at all. Thank you.

17 MR. CRICKMER: Okay. Thank you.

18 MR. BENDERSON: Andy Ellard? Anybody from
19 Manda Machine company? All right. I guess we'll proceed
20 onward. Linda Crider, Vice President of Global
21 Strategies, USE, Inc.

22 MS. CRIDER: Good morning. My name is
23 Linda Crider, partner and vice president of USE
24 Incorporated located in Rockwall, Texas. My company does
25 data processing and related services. The size standard

1 for my business is \$21 million, which I feel is a fair
2 standard.

3 I'm pleased to testify today on behalf of
4 Women Impacting Public Policy or WIPP, a national
5 bipartisan public policy organization representing more
6 than 505,000 women in business and women business owners
7 nationwide.

8 We are particularly concerned with the
9 restructuring of the SBA's federal size standards and the
10 effects they will have on small businesses such as my
11 own. I want to thank you and others from the SBA for
12 affording me the opportunity to speak to you today about
13 the size standards restructuring.

14 USE, Incorporated is three years old and
15 has only begun pursuing federal contracts in the last six
16 months. I'm testifying today because changes to the size
17 standards could seriously impact my company's ability to
18 compete for business from the world's largest customer.

19 WIPP understands SBA's desire to improve
20 the small business size regulations and share SBA's
21 desired goal which is simplification and clarity with
22 regard to what constitutes a small business. After all,
23 no small business wants to find out they've been
24 competing against large companies that just happen to
25 figure out how to gain the federal contracting system.

1 Although simplification of a federal
2 regulation is almost always beneficial to small
3 businesses, WIPP members have found the current size
4 standard rule to be workable, understandable, and fair.
5 WIPP polled its membership and worked with its
6 procurement committee to respond to the proposed size
7 standards. Here is what we found:

8 First, we understand that SBA is
9 considering reducing its size standards to 10 levels.
10 WIPP does not agree that the number of size standard
11 levels should be reduced simply for the sake of a
12 reduction. Rather, SBA should establish as many size
13 standard levels as is necessary to reflect the specific
14 characteristics of sectors and subsectors of our economy.

15 Moreover, WIPP members have found the
16 SBA's use of the North American Industry Classification
17 System and its detailed categorization of industry
18 subsectors to be helpful in determining the applicable
19 size standard for their businesses.

20 Secondly, WIPP favors retaining size
21 standards based on annual receipts for the service
22 sector, and requests the SBA change the definition of
23 receipts from total or gross income to net income. A
24 number of our WIPP members own companies that provide
25 services or staffing needs at a customer's location.

1 In services industries, a company's
2 internal staff may be small, but its payroll fluctuates,
3 and at times, may be relatively large. This is also true
4 for companies who hire temporary staff for a specific
5 customer assignment. Annual receipts provide a more
6 reasonable and accurate measure of the size of such
7 businesses.

8 WIPP expresses no opinion as to whether
9 all small businesses should be subject to an annual
10 receipts or other revenue-based standard. To the extent
11 SBA continues to include employee-based standards,
12 however, it should measure the number of employees on a
13 full-time equivalent or FTE basis rather than continuing
14 the current standard which counts each individual
15 employed on a full-time, part-time, temporary, or other
16 basis. One of the keys to success for many women
17 entrepreneurs is flexibility in employment.

18 WIPP believes that a rule which counts
19 every employee as a full-time employee, even though he or
20 she may be working part time or in a job-sharing
21 arrangement, has a negative impact on many employees of
22 small businesses, especially women and single parents for
23 whom flexible working arrangements are a necessity rather
24 than a luxury.

25 We do not believe independent contractors

1 should be treated as employees of the small business
2 concern, and payments to them by the small business
3 should not be treated any differently than other business
4 expenses in determining net income.

5 Our members have expressed a legitimate
6 concern that any major change in the small business size
7 regulations could result in tens of thousands of
8 businesses losing their small business eligibility for
9 federal government programs. Many small businesses
10 develop business plans and make key business decisions
11 with the goal of obtaining and maintaining their
12 eligibility for SBA small business programs.

13 Similarly, many large businesses have
14 built relationships over time with small businesses for
15 certain services and supplies, and these large businesses
16 will be forced to locate new service providers and
17 suppliers in order to meet internal or government-imposed
18 small business contracting goals.

19 As the large business community will
20 advise, it is often a challenge to locate and build a
21 relationship with a small business that manufactures or
22 provides an item or service required, and can do so for
23 an extended period of time.

24 In the event SBA adopts any major change
25 to its size standard regulations, WIPP favors either

1 grandfathering in existing small businesses or
2 establishing a one- to two-year transition period for
3 those businesses that no longer qualify as small under
4 the new regulations.

5 Many WIPP members have found it extremely
6 difficult to compete for federal government contracts,
7 including small business set-aside contracts because of
8 their very small size. Indeed many WIPP members with
9 businesses participating in the SBA's 8(a) programs have
10 been unable to reach a level of participation in
11 government contracting that they regard as satisfactory
12 and fair.

13 WIPP favors the creation of a separate
14 set-aside program for microbusinesses. Although the
15 recent pilot program may have only had limited success,
16 but believes that such measures are necessary to provide
17 microbusinesses with access to government contracting,
18 especially in today's environment of contract bundling by
19 procuring agencies.

20 WIPP also believes that as much benefit,
21 if not more, could result from SBA requiring prime
22 contractors and higher-tier subcontractors on large
23 contracts to include microbusinesses in their small
24 business subcontracting plans. In addition, creation of
25 a microbusiness category should be part of any proposal

1 that would increase the current size standards.

2 We encourage the SBA to continue to
3 promote joint venture agreements between small business
4 contractors. Such agreements are an important tool for
5 small businesses to be able to compete fairly for
6 government contracts.

7 In closing, we ask the SBA to resist the
8 temptation to change for change sake. Federal
9 contracting is far more complex and has many more
10 barriers for women-owned business in the commercial
11 market. Making drastic changes to the size standards
12 will complicate federal procurement even further.

13 While we all agree that federal
14 contracting officers should have a clear set of
15 guidelines to avoid the mistake of using a large business
16 as a small business, we believe the effect on small
17 businesses should be the number one concern of the SBA.

18 I would be happy to answer any questions.

19 MR. BENDERSON: Well, thank you very much.
20 Don't forget -- and I don't know if I announced this --
21 to leave a hard copy. Okay. Thank you very much.

22 MS. CRIDER: Thank you.

23 MR. BENDERSON: I just want to mention, is
24 Andy Ellard here from Manda Machine Company? Okay.

25 Catherine Sedwick, Director of Business

1 Development, Alliance International Assistance.

2 Catherine Sedwick? No? Okay.

3 Fred Patterson, President, The SBIR Coach.

4 MR. PATTERSON: Mr. Chairman,
5 distinguished members of the committee, my name is
6 Fred Patterson. I'm the president and chief executive
7 officer of a business called The SBIR Coach.

8 I'm pleased to appear before you to
9 discuss the proposed changes to the small business size
10 standards and the proposed changes to the eligibility
11 rules for participation in the Small Business Innovation
12 Research Program.

13 I have been involved with both large and
14 small businesses over my 40 years in the business world
15 from having served as the director of planning for a
16 Fortune 500 aerospace company to having been involved in
17 a founding role with no fewer than six start-up companies
18 over the past 25 years. I have held every C-Level
19 executive position you can name.

20 As a result of my experience, I can speak
21 with conviction on the dynamics of small versus large
22 businesses, and of the relative importance of fair
23 treatment in business matters. The fact is that small
24 businesses are at a distinct disadvantage with regard to
25 access to participation in the commerce of the country.

1 The big players can pay for resources that are beyond the
2 reach of the small player.

3 Contrast this with the fact that
4 innovation comes primarily from small business. Large
5 businesses are unwilling to bother with taking the risks
6 inherent in fostering innovation. They want to bet on
7 sure things, with predictable returns on invested
8 capital. Small businesses, on the other hand, are
9 inveterate risktakers, and the results can pay huge
10 dividends.

11 It was in recognition of this that the
12 SBIR Program was created some 23 years ago. With a
13 meager percentage of the government's R&D budget set
14 aside for high-risk projects to be undertaken by small
15 businesses, the idea was to foster innovation and give
16 these risktakers a chance to show their stuff, for the
17 betterment of the national interest.

18 My involvement with the SBIR Program began
19 in 1986, with my participation as a co-founder, I was
20 CFO, in a start-up company that quickly won repeated
21 successes with obtaining SBIR awards. Eleven years
22 later, I did it again, as a co-founder with both the COO
23 and CFO hats. Together, the two companies secured close
24 to \$50 million in SBIR- and STTR-related funding in all
25 three phases.

1 The second company leveraged its \$12
2 million in SBIR funding to obtain \$18 million in Series A
3 venture capital funding, but we were astute enough to
4 negotiate a valuation position that kept their ownership
5 below 50 percent so as not to lose our eligibility for
6 continued SBIR participation.

7 In both cases, the companies were
8 competing for SBIR awards against other companies in the
9 same league, with similar resources. It was a level
10 playing field and a fair competition.

11 We won because of superior presentations
12 of the proposed projects to produce robust technology
13 that met the needs of the customer agencies. Neither we
14 nor our competitors in the competition for awards had
15 deep pockets with virtually unlimited resources. It was,
16 we felt, a fair competition.

17 If Congress or the SBA changes the
18 eligibility rules to permit majority ownership by venture
19 capital entities, small businesses owned by large VC
20 organizations with millions of dollars of available
21 capital would compete head to head with small businesses
22 that have no such funding potential.

23 The early-stage funding process for
24 qualifying small businesses would be in jeopardy, and the
25 entire spirit of the SBIR Program would be subverted to

1 serve larger interests. The entrepreneurial spirit so
2 vital to the SBIR Program's success would be quashed.

3 Of the firms who are receiving venture
4 capital, the overwhelming majority are currently in the
5 biotechnology world and are targeting the National
6 Institutes of Health primarily, the NIH. In actual fact,
7 aside from obvious overstated suggestions of what
8 terrible things would happen if the rules are not
9 changed, the numbers of companies involved are actually
10 quite small.

11 Based on data assembled by the Innovation
12 Data Institute of Swampscott, Massachusetts, of the over
13 2,500 firms who were in receipt of SBIR funding from the
14 National Institutes of Health between 1998 and 2003, only
15 about 80 were in receipt of venture capital.

16 We can document how much money that
17 involves, but we don't know necessarily how the deals
18 were structured and whether the VCs secured a majority
19 interest. However, based on the numbers, estimates have
20 been made that the proposed rule change perhaps involves
21 fewer than 50 companies.

22 MR. BENDERSON: Time.

23 MR. PATTERSON: Time?

24 MR. BENDERSON: Your five minutes are up.

25 MR. PATTERSON: Okay. I've got just

1 another minute.

2 MR. BENDERSON: Go for another minute.

3 MR. PATTERSON: Okay. Thank you. I'll
4 talk a little faster.

5 Hardly enough to warrant a major shift in
6 how SBIR is managed. Perhaps the problem lies more in
7 how the valuation was arrived at that gave the VCs a
8 majority position. The VCs seem to want even bigger and
9 bigger pieces of the small business pie.

10 Far more telling than any position the
11 proponents of this change are taking specific to this
12 issue is the fact that if we do allow this to happen, it
13 will be the thin end of what may be a very thick wedge.
14 What other exception do we allow next?

15 My current role is that of a consultant
16 doing business as The SBIR Coach, guiding small
17 businesses who have a road map to commercialization of
18 their technologies to successful navigation of the
19 competitive process in SBIR as a source of seed funding
20 for the risky venture of technology development.

21 My clients are typically at too early a
22 stage and are too risky for venture capital entities yet.
23 But with a couple of successful SBIR projects and some
24 good partnering, the interest will manifest.

25 What I fear is that, if this proposed rule

1 change is put into effect, companies such as I coach will
2 find that the numbers of projects available to them have
3 diminished, with awards going to companies farther along
4 the road who find the pickings easy.

5 The net result will be fewer companies
6 working on fewer innovative technologies with a profound
7 reduction of important public-to-private sector
8 technology transfer, and the ultimate loser will be the
9 U.S. economy and our national security.

10 MR. BENDERSON: Why don't we end it there.
11 I'm not trying to cut you off and I apologize, but give
12 Anna Marie a copy. This will be part of the
13 administrative record, and we will read it then.

14 MR. PATTERSON: All right. But what I'm
15 saying is, please do not make any changes to that.

16 MR. BENDERSON: You made some very good
17 points, and I think they're worth considering. Thank
18 you.

19 MR. PATTERSON: If anyone wants a copy, I
20 have extra copies.

21 MR. BENDERSON: Don't forget to give Anna
22 Marie a copy. And, again, I apologize for the shortness
23 in time. Okay.

24 Jan Triplett, Chief Operating Officer of
25 Business Success Center.

1 DR. TRIPLETT: In the interest of time,
2 gentlemen, if it's all right with you, I'm going to skip
3 a lot of the sort of who I am and just tell you,
4 basically, who I am because that will be in the record.

5 So let me say for the record that I am
6 Jan Triplett. I am -- I have a Ph.D. from the University
7 of Texas. I am the chief operating officer of the
8 Business Success Center, which is a private business in
9 Austin, Texas. I am also one of your certified technical
10 advisers for your Community Express program.

11 At one point, in 1991, I was selected as
12 the Small Business Advocate for the state of Texas. And
13 in 1995 I was delegate to the White House Conference on
14 Small Business. And in 2000 and 1998, a Congressional
15 Summit delegate.

16 I've also been on your side of the table.
17 I used to work for the state of Texas. I purchased
18 things from small businesses. I worked with communities
19 to make sure that they were kept informed as to what we
20 were doing. And so I want to applaud your efforts to try
21 and resolve some of the issues that are very much of
22 importance to the small business community today.

23 I'm not coming to talk to you today as a
24 contractor, but really to look at two specific issues
25 that cross the bounds of contracting. They really look

1 at all small businesses, because one of the things that
2 the Small Business Administration has done since its
3 founding in 1955 and its creation of the Small Business
4 Office of Advocacy in '72 is, it has done a great deal of
5 effort and spent a lot of money and time to make people
6 aware of what small businesses do.

7 And I'm probably repeating things that you
8 already know, but it -- there are many here, maybe they
9 haven't heard it. Your research and that of the people
10 that you've sponsored indicates that small businesses
11 represent more than 44 percent of the total private U.S.
12 payroll; generates from 60 to 80 percent of the net new
13 jobs, actually all of the new jobs rather than the jobs
14 that are simply replacement jobs; 50 percent of the
15 nonfarm GDP; provide most of the job training; give young
16 workers, especially teenagers, their first exposure to
17 the labor market; and an accessible entry for older
18 workers, especially women, and those returning to the
19 workforce; produce 13 to 14 times more patents per
20 employee than large patenting firms; inspire the next
21 generation.

22 For instance, two-thirds of all college
23 students say that they intend to become entrepreneurs at
24 some point in their career. We also pay more than 60
25 percent of the taxes and spend more in regulatory

1 compliance than larger businesses.

2 My concern is that if the standards are
3 increased, obviously, there are some issues with regard
4 to other areas of regulatory compliance that could be
5 adjusted. In other words, if a small business were
6 perceived to be 1,500 employees, then presumably they
7 would be able to comply with certain regulations that
8 currently certain levels of small business are not.

9 The other issue that is an issue here has
10 to do with the Community Reinvestment Act. If a bank can
11 fulfill their obligations with regard to funding by
12 funding only larger businesses, that means those
13 businesses that are small businesses like ours -- ours is
14 a microbusiness, it has four employees -- might find it
15 increasingly more difficult to find access to capital,
16 which brings me to the SBIR problem.

17 If the SBIR is to remain a program that
18 really celebrates and recognizes the economic importance
19 of small business -- the Federal Reserve has already
20 issued an article regarding small business and its impact
21 on economic development recovery. If the SBIR standards
22 are changed, it stops being a small business program. It
23 becomes something else.

24 My concern is that -- because I just
25 received an award from the SBA for 15 years of volunteer

1 service -- is I don't want you-all to disappear, and I'm
2 very concerned that if you do things that really
3 delineate a larger business, that people might ascribe
4 the fact that maybe Small Business Administration is no
5 longer important. That really, you're just part of the
6 Department of Commerce. And you-all have worked too hard
7 and helped us get too much respect to let that happen.

8 So I hope that you will really consider
9 using smaller numbers. A hundred is not the best, but
10 it's better than others. And I did do a small study
11 using some of the people in the Austin area -- we come
12 from the city of Austin -- which I'd be happy to share
13 with you.

14 MR. BENDERSON: Thank you very much. Any
15 questions from the panel? Okay. Thank you. Don't
16 forget to --

17 MS. TRIPLETT: Thank you. I already did.

18 MR. BENDERSON: Okay. If any of you
19 haven't signed in, Fran Smith outside will take your
20 signature. Okay. We'll move on to the next speaker.

21 Frances Hellon, Federal Account
22 Coordinator, Omega. I guess she's not here.

23 And I apologize if I mispronounce this.
24 Ahunsimhenre Arheghan, President, Hunsig Group, Inc.
25 Okay.

1 Johnnie F., SC&A. Inc. Okay.

2 Fred Moses, Telecom Electric.

3 MR. MOSES: Good morning, gentlemen. My
4 name is Fred Moses, and I'm president of Telecom Electric
5 Supply Company. We're a wholesale company of electrical
6 supplies and telecommunication equipment here in the
7 Dallas area. I -- as a -- and I'm a small business. We
8 have been in business 20 years this year. It is
9 certainly a labor of love being a small business.

10 It is very -- it is very difficult for us
11 as small businesses to compete with the megacompanies
12 that are -- that are -- we have in the marketplace. I'm
13 opposed to the changes that would lessen any opportunity
14 for small businesses to compete. Any changes that would
15 encourage -- any changes should be encouraging us -- and
16 encouraging us to have opportunities -- more
17 opportunities available to us.

18 I don't believe that the changes that we
19 are -- that we're hearing from -- that are being proposed
20 today are doing that. As a small business person that
21 helps provide jobs in the marketplace where we provide
22 more than 50 percent of the private sector jobs, any
23 changes that should be taking place should encourage us
24 to develop more business.

25 And any changes, also, that are being

1 considered should help to clearly define who we are as
2 small businesses. And not such -- any changes that are
3 being considered should not be so complicated that it
4 would be hard for us as small businesses to define who we
5 are and -- as we are in the marketplace.

6 Also, I think the changes that, in
7 particular, as wholesalers it would be easy -- the
8 changes being proposed would easily have large businesses
9 competing with companies like mine. And I think that
10 is -- that is a travesty and should not take place.

11 So I'm opposed to the changes that are
12 taking place and being proposed, because as a wholesaler
13 in particular, I think with some of the technologies
14 available today, when you talk about changing the
15 standards for wholesalers, it would surely have us
16 competing with large businesses, which would make it very
17 difficult for us to have greater opportunities available
18 for us.

19 I know in many cases where I worked with
20 my companies on a -- in the private sectors opportunities
21 -- there are many opportunities where we've gone in with
22 opportunities that -- proposals that we presented to our
23 clients on the private sector sides.

24 And we've saved them a tremendous amount
25 of money because they have been dealing with small

1 businesses like ours, as opposed to large businesses.
2 And I'm sure those opportunities are available. They
3 will continue to be available as we as small businesses
4 provide opportunities to the federal government.

5 So my testimony today is that I'd really
6 like to see the standards be clarified. Any changes that
7 are -- that are being proposed, if changes have to be
8 done, they really need to provide more opportunities for
9 other small businesses. Thank you.

10 MR. BENDERSON: All right. Well, thank
11 you very much. Don't forget to give your written remarks
12 to Anna Marie Rush right there.

13 And the next speaker will be Mary
14 Dunseith, Mail Boxes, Etc. Mary Dunseith?

15 Okay. Then we'll move on to Terry Cowan,
16 Alliance Work Partners.

17 All right. Oliver Bell, Global Labor &
18 Employment Strategies, Inc.

19 Moving along here. Cynthia Fitzgerald,
20 DMSG.

21 Cathy Dougherty, President, Dougherty
22 Sprague Environmental, Inc.

23 MS. DOUGHERTY: Good morning. I'm Cathy
24 Dougherty, owner, principle engineer, and president of
25 Dougherty Sprague Environmental in Richardson, Texas.

1 I'm happy to be here today, and I appreciate this
2 opportunity to testify.

3 We are a small woman-owned and -operated
4 8(a) SBA certified engineering environmental consulting
5 firm. And we struggle daily with the issues of fraud and
6 misrepresentation of women and minority businesses and
7 large business posing as small business.

8 I'll try to be brief. I'd like to start
9 with the size standards, and I'd like to say that I would
10 favor a revenue-based size standard. Unfortunately for
11 my industry, the current revenue base is either 4 or 6
12 million, whether I decide to be an engineer or an
13 environmentalist on any particular day. That's way too
14 small.

15 My firm, with eight to 10 professionals,
16 is a microbusiness, but is capable of doing \$1 million a
17 year. Therefore, with only 60 people, I can exceed the
18 \$6 million goal.

19 On the other hand, a 500-person firm is
20 capable of doing \$50 million. Somewhere in between --
21 and first of all, the right business strategy should
22 match the two up, and I believe it lies somewhere in
23 between where we really should be. Why would IT
24 professionals and engineers be able to do 21 million, and
25 we're limited to four or six?

1 Secondly, on the issue of tiering --
2 tiering as a system, I'm generally not in favor of it.
3 First of all, it would be overly complex. The SBA's
4 budget has been slashed repeatedly. We lost six
5 wonderful people out of the local office just two weeks
6 ago, including several very competent and highly
7 effective 8(a) BOSs, including my own.

8 How are they going to police such a
9 complicated system? If tiering is allowed, it should be
10 for the small business or the microbusiness growing
11 between that very, very small size and the medium size,
12 still small business.

13 Large businesses should not be allowed to
14 tier with 1,000 or 1,500 employees. This system will
15 only allow for more fraud. And we don't need millions --
16 hundreds of millions of dollar firms that need help
17 getting out of the small business arena.

18 Women-owned business also has a specific
19 problem in the lack of certification. Self-certification
20 doesn't work. The SBA knows that. We must have
21 certified women-owned firms that are truly women-owned
22 firms, women-owned operated, women-owned control,
23 women-owned with core competency. We run into this day
24 after day. They just check the box and nobody's
25 checking.

1 So I am in favor of, yes, women-owned
2 firms being certified by either the SBA or a third party.
3 And that -- there are plenty of us legitimate women-owned
4 firms out there. Please help the government to find us
5 in this crowd of me toos.

6 And please don't put those set-asides in
7 place without some sort of third-party reviewed
8 certification. That goes for the size standards.
9 Self-certification is not working. We must have these
10 things policed, and SBA, unfortunately, has no one left
11 to police anyone.

12 The venture capitalist are not really in
13 my purview, but I can say I'm 100 percent against venture
14 capitalist being able to go after SBIR money. That's the
15 quickest way for small business to lose its business. I
16 can't see anyone this benefits except the venture
17 capitalist.

18 I also agree with the SBA's current
19 affiliation rules, and do not believe franchisees should
20 be allowed to compete with other independent small
21 businesses.

22 And I'd like to close by saying that by
23 the SBA's own statistics, 98 percent of Americans work
24 for businesses with less than 100 employees. If that is
25 the standard that they're going to use, then that is a

1 small business. That will hurt me eventually. I'm
2 hoping I'm going to be successful and I'm going to grow
3 out of that standard, but if that's where it's going to
4 be, leave it at 100, and I'll deal with it.

5 Thank you.

6 MR. BENDERSON: Thank you. I just would
7 mention that a lot of these cases that we have before our
8 Office of Hearings and Appeals are brought by other
9 bidders that protest the size of the successful bidder.
10 Also, since Texas is under the 5th Circuit Court of
11 Appeals, there's some rulings there that says that if one
12 small business -- if somebody misrepresents their size
13 standard, somebody who lost a contract can sue them.

14 So I don't necessarily recommend that
15 because it is very expensive, but there is other
16 enforcement besides SBA, although I'm for increasing SBA
17 employment, and maintaining my own. Thank you.

18 Rick Karlos. Rick is with Leetex
19 Construction.

20 MR. KARLOS: My grandchildren let me use
21 their science lab.

22 My name is Rick Karlos. I'm president of
23 Leetex Construction. We're a general contractor in
24 Texas -- Dallas, Texas. It's my understanding that the
25 goals for SBA is to simplify the business size standards

1 and develop a fair method of determining the size of a
2 company.

3 I'm here to speak on the construction
4 industry for general contractors and subcontractors. To
5 base size of a construction company on the number of
6 employees would be disastrous for both general
7 contractors and subcontractors. I've been in the general
8 contracting business some 35 years, and to base it on the
9 number of employees would make many, many large
10 contractors instantaneous small contractors.

11 I've seen the philosophies of our industry
12 change over the last 20, 25 years very drastically.
13 After September 11th, insurance companies and bonding
14 companies, which are vital to our business, suffered
15 great losses. And as a result, they've made more
16 restrictions on us. Higher premiums, more stringent
17 requirements to qualify, increased and more frequent
18 reporting and auditing.

19 Our business, as many small contractors,
20 is about risk and taking risks, and that's what we do
21 every day. Ten to 15 years ago, we did 20 to 40 percent
22 of our own work with our own forces. Now we subcontract
23 85 to 100 percent. We do that to limit the risk, spread
24 the risk around. And we can do the same volume with less
25 employees than we did in years past.

1 The insurance companies, the bonding
2 companies will love it. It sees a -- they see us spread
3 our risk around. In addition, they also -- if there is a
4 loss or a problem, they have some extra help with those
5 losses. The federal government wants to restrict the
6 risk also. That's why they require us on any job over
7 \$25,000 to provide them with a paid performance bond. So
8 they're looking for the protection also.

9 The board's in front of you, and the
10 attachments were taken from the Dallas Business Journal
11 for the past three years. It simply lists them as the
12 largest Metroplex general contractors in the area.
13 You'll see that those construction companies with total
14 employees, total receipts, the smallest one there is \$60
15 million. They go from \$60 to \$100 million and up based
16 on employees.

17 I'm sorry. I have a hard time visualizing
18 a \$60 to \$70 million company being a small contractor.
19 Interesting enough, when I started doing the math, I
20 noticed that it turned out that it's over a million
21 dollars per employee in most cases. Some, two million.
22 Probably an average of a million three. I didn't do it.

23 But just as I read the proposed changes
24 for the number of employees, just using 100 employees,
25 count the employees, full time, part time, temporary,

1 sometime, average the employees over the last pay period,
2 add them up. Then if you've got an affiliate, then you
3 add those up and divide them. You know, more paperwork,
4 more time, more reporting.

5 I think you're defeating your own purpose
6 by creating a more complicated system. All you're doing
7 is trying to look for companies for ways to downsize
8 their companies and become a small company
9 instantaneously. They outsource more and more in all
10 industries.

11 I suggest to the SBA that they leave the
12 standards based on receipts, for our industry anyway.
13 It's simple. It's accurate. It's a realistic measure of
14 the size of the company. It's confirmed by the CPA
15 firms. They have a lot to lose if they lie about it.
16 The Internal Revenue Service can audit the books. They
17 can do it quickly. They can do it accurately.

18 Your decision that you're making today
19 will affect all small businesses and directly affect our
20 industry. I challenge you to look at those who are in
21 favor of basing their companies on employee size to see
22 if those are large companies that want you to lean
23 towards employees rather than receipts so that they can
24 become instantaneously small companies.

25 I thank you for your time.

1 MR. BENDERSON: Thank you very much. That
2 was very helpful. Don't forget to give Anna Marie Rush
3 your prepared remarks.

4 Denis Carson, Vice President and General
5 Manager, Four Winds, Inc.

6 MR. CARSON: Good morning. I'm Denis
7 Carson, vice president of Four Winds Services. We're out
8 of Altus, Oklahoma. It's a Native American, woman-owned
9 graduate of the 8(a) program for one year.

10 The company's received such awards from
11 the SBA as Director of Choice, the Blue Chip Award,
12 things of this nature. It has an extensive background in
13 doing government contracts for both BOD and DOD.

14 I'm just going to talk briefly about some
15 of the highlighted areas. We are directly opposed to
16 what is being proposed here on the size standards. What
17 is not being taken into consideration is the fact that
18 many of the jobs in government contracting, such as base
19 operations, require a multiple-skill trade. You cannot
20 go out and get that experience in these different classes
21 without coming together and having a higher number than
22 what is being proposed and to remain small.

23 We're going to be taking business away
24 from small business if we do this. There will be less
25 small businesses competing, because they're all going to

1 be up in the large business size. We have certain rules
2 out there. I hear the discussions on the joint venture
3 capitalists, or that large businesses are being given
4 set-asides.

5 Where is the contractor's office --
6 officer's due diligence being done? Where is the
7 ostensibility being enforced? The ideal decision case is
8 probably the best. It laid out all the rules of what
9 determines affectability of whether -- who's driving the
10 train. Is it the large business or the small business?

11 These are the things that have to be
12 looked at. We don't need to be fixing something that's
13 not broke. The receipts average right now is a simple
14 system. It has a background. You can stand up and say,
15 here's my tax return.

16 There's no way that you can justify human
17 resources return on employees. To say that one employee
18 that worked for me one hour a day counts against me in a
19 12-month period is, basically, ludicrous down to a point
20 that it is going to hurt the industry.

21 We've gone through a lot of these
22 calculations of the number of employees. Looking at
23 proposed rules, we've seen a lot of the things that the
24 SBA is proposing. One of the things -- we appreciate it
25 when the SBA raises the size standards. But, my god,

1 they've only done it three times in the last 30 years.
2 And now they're also proposing not a set time period.
3 They're saying as the industry bears, not based on any
4 inflationary acts.

5 We look at -- there are no answers to what
6 do we do with a company that has 85 employees. We've
7 just gone through a lot of gearing up the military
8 organizations which requires to bring on more people to
9 make them satisfactory. For natural disasters. Oklahoma
10 is kind of used to those. But it costs us to bring in
11 more people. Well, now what we end up doing is, is we
12 inflate those numbers for over 100, but it's based upon
13 one year.

14 Where at least under the receipts base, we
15 have an average. We can come up with something over a
16 three-year period, not just one incident that took place
17 where the company has now moved out of that system, and,
18 in fact, to being large, and then they have to come back
19 to being small.

20 The establishment of the size standards is
21 solely for federal procurement. In 1984 there were
22 separate size levels in place for federal procurement,
23 but for the past 20 years the SBA policy has put the size
24 standards to apply to all programs.

25 Moving forward is backwards in this case.

1 On this proposal, the SBA should consider why the
2 separate standards were originally established. And that
3 was the reason for the policy change to the
4 one-size-fits-all.

5 The joint ventures, as I stated, the
6 recent policy of limiting small business joint ventures
7 to three offers over a three-year period has to be better
8 defined. What is -- it's not clear what is precisely
9 meant by three offerings. If two or more small business
10 have formed a joint venture and the thing works under a
11 multiple awards schedule, are the three offerings limited
12 to three delivery orders under that schedule? There has
13 been no definition defined of what three offerings are.

14 So it really -- if we're going to offer
15 something, we need to know what is being offered. And
16 the same thing with the godfather [sic]. People are
17 addressing it because it's been there. We don't know
18 what the final decision is going to be made. That's why
19 they're telling you, don't do it.

20 When that decision comes out from you, are
21 we going to be able to come back and tell you again what
22 the problems are? No. It's going to be a decision
23 that's made and that's what we're going to have to live
24 with.

25 But that's basically all I have to say.

1 And to end it, you know, if it's not broke, don't fix it.
2 Thank you.

3 MR. BENDERSON: Thank you very much.
4 Robert England, Chief Executive Officer,
5 Cumbre.

6 MR. ENGLAND: Good morning, everyone.
7 My name is Bob England, and I'm the CEO of
8 Cumbre, Inc. We're a biotech company here in Dallas, and
9 we're focussed on the discovery and development of new
10 antibiotics. The company was formed in 2001. We have
11 about 25 employees, and we have no revenue. Our new
12 antibiotic for the treatment of hospital-acquired staph
13 infections will begin human trials early next year.

14 The company has been successful in the
15 past in qualifying for SBIR grant research programs that
16 were based on new therapies for tuberculosis, cystic
17 fibrosis, and the bioterrorism pathogen that causes
18 plague.

19 Following the acquisition of one of our
20 investors by a large corporation and the subsequent
21 transfer of that ownership to a venture capital company,
22 our company no longer qualified for SBIR grants, and the
23 projects were subsequently terminated.

24 I'd like to comment today on the impact of
25 venture capital firms and SBIR on the biotech industry,

1 and I want to particularly address how it relates to the
2 antibiotic field.

3 As I'm sure everyone here is aware, it
4 takes hundreds of millions of dollars to -- of investment
5 to bring a new drug to the marketplace. It's a risky
6 business. It has uncertainties, both on the scientific
7 side and on the market side.

8 Furthermore, and a lot of people are
9 unaware of this: The antibiotic discovery area has been
10 recently abandoned by large pharmaceutical companies in
11 favor of chronic therapies. They would like to sell you
12 a pill that you take every day instead of a group of
13 pills that you take for four days and then quit.

14 So -- but at the same time, bacteria which
15 cause the infections continue to acquire resistance to
16 the currently-available antibiotics, and so that creates
17 an urgent need for new ones. The seriousness of the
18 brewing public health crisis is detailed in a recent
19 publication by the Infectious Disease Society of America,
20 which is a group of doctors which I will include in the
21 supplemental material.

22 In meeting with people in business and
23 socially, personally I'm struck by the number who have
24 personal experience with a resistant infection that was
25 very difficult to treat. Most of us here have grown up

1 in an era where antibiotics were available to doctors
2 that would treat just about any infection. That era is
3 quickly ending.

4 A number of very small companies in the
5 scale of drug discovery have tried to answer this
6 challenge by seeking investors with the patience to
7 support the long drug-approval process. To have a chance
8 of success in the drug business requires a certain size
9 and infrastructure that's quite difficult to fund with
10 individual investment.

11 Our company, for example, has invested \$30
12 million in facilities and research in four years, and
13 still we have no revenue. An additional 75 to \$100
14 million will be needed to commercialize our first
15 product. Without the support of the venture capital
16 firms, this kind of scientific enterprise would be
17 impossible.

18 The use of SBIR grants by companies such
19 as ours allows the pursuit of parallel lines of research
20 or investigation into areas that don't have great
21 commercial payoff, such as bioterrorism or third world
22 diseases.

23 The success of the projects that are
24 supported by these grants depends heavily on the use of
25 the infrastructure that is put into place by the venture

1 capital investment.

2 SBIR grant funding also is essential for
3 the continuation of research in companies where the
4 venture capital funding is focused on the later stage
5 clinical activity and not the research part.

6 We certainly recognize the challenge that
7 you face in trying to create guidelines that apply across
8 multiple industries, and we do appreciate the opportunity
9 to have our voice. We support the proposal where U.S.
10 venture capital ownership of SBIR participants counts
11 towards the 51 percent ownership and control requirement.

12 We believe that especially in the biotech
13 industry where venture capital funding is the only
14 practical mechanism today, this change will allow
15 participation of highly qualified applicants in research
16 areas that are critical to our nation's health, safety,
17 and security.

18 Thank you very much.

19 MR. BENDERSON: Thank you.

20 Rodney Williams, President, Three Fold
21 Consultants. Oh, I'm sorry.

22 William Correa, Paragon Project Resources,
23 Inc.

24 MR. CORREA: Good morning. Mr. Chairman,
25 members of the task committee, and Mr. Alexander, good

1 morning. How are you? And all those in attendance, I'm
2 happy to be here to have an opportunity to speak with
3 you.

4 My name is William Correa. I'm the CEO
5 and founder of Paragon Project Resources here in Dallas,
6 Texas. We now have offices across the country, I'm
7 pleased to say. I have been 8(a) certified, and have
8 gone past that. It was really not a program that helped
9 us grow our firm because of the type of business we do.

10 But we -- we're in -- I'm an engineer.
11 I'm a licensed professional engineer, and I'm also in the
12 construction business as a gentleman spoke earlier. I --
13 I'm involved in that type of industry. So I wanted to
14 address several points that concern me about the issues
15 at hand.

16 As far as the tier size standard, I'm
17 concerned and opposed to that. I agree that the revenue
18 used for measuring and defining organizations is working,
19 and someone earlier commented on the NAICS code -- using
20 the NAICS code classification as the basis.

21 I am concerned about an item that the lady
22 spoke about earlier in the engineering business as well,
23 and that's your size standard that you use for some of
24 these NAICS codes. It hasn't been changed for a long
25 time.

1 The industry has required many changes of
2 our businesses, and therefore, some of those standards
3 are too low. She spoke about something in between. I
4 suggest to you that you consider 50 to 100 percent
5 increasing those standards because of the impact it's
6 having.

7 As far as grandfathering, you've already
8 commented you're not really big on that, but I'm opposed
9 to that idea. And the venture capital thing, I'm also
10 opposed to that. I think anyone else controlling a
11 company, whether it's a franchisee deal, or the venture
12 capitalist deal, I think it's a bad idea for the whole
13 concept that you're proposing.

14 I do have an interesting proposal for you
15 in this -- in this concept of exclusions. I'm going to
16 propose to you that you consider another exclusion. I'd
17 like to propose that you would allow me to set up a
18 family corporation. It will be a nonprofit. And that
19 you exclude it from the size standard so I can go after
20 any business that I want.

21 The reason I'm proposing that is because
22 if you'll allow me to do that, I'll finally be able to
23 compete with the Indian tribes that you're allowing to do
24 that very thing.

25 Now, earlier, we had a gentleman speak in

1 the construction industry where, I believe it was that
2 gentleman, or maybe it was someone else that said that
3 they were a certified firm, and that they were an
4 American Indian firm.

5 You're certifying firms that are owned by
6 American Indians just like you're certifying other firms,
7 African American and Hispanic. But you're playing a game
8 with the Indian tribe. That's a different deal.

9 It wasn't necessarily included in your
10 documents as far as the criteria, but nonetheless you're
11 working with different rules on Indians tribes. I've had
12 to compete with Indian tribes before, so I know what I'm
13 talking about.

14 But nevertheless, if you're going to still
15 keep that game with the Indian tribe, I suggest that you
16 allow me to have the Correa Nonprofit Family Company, and
17 that I can then compete with them in the same manner that
18 you're allowing them to participate.

19 Indian tribes are coordinating or meeting
20 up with other large firms and are competing against
21 contracts. And I've had to totally pull out of a couple
22 of proposals that were of substantial size because of
23 that.

24 So, anyway, that goes hand in hand with
25 the -- with the size standard issue, because that's not

1 addressed in your document, but it's -- you're handling
2 that separately, and that's -- and I'd like to put it on
3 the table.

4 With those comments, I thank you for your
5 time.

6 MR. BENDERSON: Thank you. Any questions?
7 Don't forget to give Anna Marie your prepared remarks.

8 MR. CORREA: Okay.

9 MR. BENDERSON: Rodney Williams, Three
10 Fold Consultants.

11 Juanita Burgoon, Burgoon Company.

12 Anthony Klinkert, General Manager,
13 Klinkert & Associates, Inc.

14 Denis Carson, Vice President and General
15 Manager, Four Winds.

16 Susan Vandament, TVP Business Development.
17 Katrina Keyes, President, K Strategies
18 Group.

19 UNIDENTIFIED SPEAKER: She just left. She
20 had a meeting. She'll be back.

21 MR. BENDERSON: Okay. We'll fit her in
22 later then.

23 Clifton Miller, Cemetrics.

24 MR. MILLER: Good morning. My name --
25 first of all, greetings. Welcome to the greater

1 Dallas/Fort Worth Metroplex and the state of Texas. My
2 name is Clifton Miller. I am the managing principal of
3 Cemetrics, and I am a certified MBE supplier by the
4 Dallas/Fort Worth Minority Council.

5 I'm a member of the Greater Dallas
6 Hispanic Chamber. I chair the public policy working
7 group for the Greater Dallas -- for the Dallas/Fort Worth
8 Minority Business Council. And I serve on the
9 Legislative Committee for the Greater Dallas Hispanic
10 Chamber.

11 But I'm going to speak today of the small
12 business owner. And I'm going to take a slightly
13 different approach, because one of the things that I
14 haven't heard discussed, and I didn't see discussed in --
15 by the other speakers or the material.

16 Please understand that any proposed rule
17 change to SBA size standards or other criteria in the
18 public sector significantly impacts business practices in
19 the private sector. And any proposed rule change that
20 does not address or consider those proposed impacts in
21 the private sector really is a flawed plan.

22 Particularly, if you look at your SBA 8(a)
23 certification program where you object to this for people
24 to develop commercial markets outside the federal
25 government market and a graduation plan. Most private

1 sector strategies around supplier adversity are based
2 upon federal standards.

3 So what you're doing, when you impact the
4 standards in the public sector, there is a residual
5 impact in the private sector as well. And that has a
6 significant impact on businesses that don't sell to the
7 federal government.

8 So basically, you know, today we operate
9 in a supply chain environment, and if you're proposing
10 rule standards changes that do not reflect the change --
11 I'm going to talk about supply chain management just for
12 about two minutes. This is really about procurement.

13 The reason you set size standards is so
14 people can compete for business. If you don't -- if the
15 proposed rule changes do not address the fact that
16 bundling is going on, or it's bundling in the public
17 sector, then it's aggregation and naturalizing contacts
18 in the private sector.

19 So supply chain management with strategic
20 working practices are becoming increasingly deployed,
21 both in the public and private sectors. That's what's
22 going on with the reductions and so on. So this desire
23 to simplify size standards, while it's understandable
24 given the budget cuts, really go against the base, or it
25 flies in the face of the fact that the supply chain is

1 becoming -- the supply chain today is different than when
2 the original size standards were proposed.

3 And the real point I'm trying to make
4 here, back to this committee is, I do not believe that
5 the proposed rule changes -- the rules changes as
6 proposed really consider or reflect upon the change in
7 how government procures products and services, and the
8 resulting impact on the private sector.

9 I am rational enough to understand that no
10 proposal is going to satisfy and gratify all of the
11 various constituents here. Issues on grand -- people are
12 all over the place on grandfathering, all over the place
13 on SBIR, venture capitalists. But I will say this: This
14 is a complex issue. It's going to require a complex
15 solution.

16 And you really have to look at it not just
17 in the purview of a rules change, but the impact of that
18 rule change on both public and private sector.
19 Procurement opportunities for small businesses as well as
20 what's actually happening in the way the public and
21 private sector secure products and services today.

22 Thank you.

23 MR. BENDERSON: Thank you very much.
24 Please leave a copy for Anna Marie Rush. If anybody
25 hasn't signed in, please do so.

1 Let's take a five-minute break.

2 (Break was taken from 9:43 a.m. to 9:58
3 a.m.)

4 MR. BENDERSON: We're next going to hear
5 from Oliver Bell, CEO, Global Labor & Employment
6 Strategies, Inc. Go right ahead. It's all yours for
7 five minutes.

8 MR. BELL: Good morning, everyone, and
9 thank you for the opportunity to testify at this hearing
10 regarding the SBA's desire to reform the size standards
11 by which small businesses are formally defined by the
12 federal government.

13 You'll have to pardon me if I'm perhaps
14 not as eloquent as some of the folks who might have
15 spoken today. I would just probably use one of those
16 quotes I had from English class which was, I come to bury
17 Caesar, not to praise him.

18 So as a brief introduction in background,
19 my company, Global Labor & Employment Strategies, is a
20 small minority veteran-owned small business. We have
21 applied for and received appropriate certifications. We
22 have a great record of accomplishment in the private
23 sector, but continue to be challenged in gaining even an
24 entry-level opportunity in the public sector.

25 The doors to knock on are many. Are we

1 able to hire armies of lobbyists like large corporations
2 to do their bidding? Unfortunately, no. However, we are
3 not discouraged because nothing beats a failure but a
4 try.

5 Therefore, we continue to engage as a
6 competitive entity should. The leadership in our
7 organization has been politically active and continues to
8 be a supporter of this administration and the overall
9 objectives of this administration.

10 In fact, we have supported the
11 administration both philosophically and financially on
12 numerous occasions over the last five years, to include
13 sponsorship in this year's 55th Presidential Inaugural in
14 January 2005, and also serving as a member of the
15 Republican Regents.

16 We believe that President Bush, as a
17 former business owner, and Mr. Barreto, as the head of
18 the SBA and the President's small business architect have
19 the core interest of small business at heart and desire
20 to put it -- put in place and maintain initiatives that
21 embrace opportunities for small business.

22 Now, according to the SBA's Web site,
23 there are several objectives for the current
24 administration, including working to ensure that small
25 businesses can compete fairly for their share of federal

1 government contracts; that they are attempting to develop
2 a strategy to reverse the trend towards the bundling of
3 contracts, a practice that has denied small businesses
4 the opportunity to win billions in procurement dollars;
5 and for small businesses that, in the past, have been
6 allocated approximately 23 percent of the contract
7 dollars, not to be confused with large businesses that
8 are competing for those same dollars; and federal
9 contracting dollars that have increased in the past
10 couple of years going to minorities, small, and
11 women-owned businesses.

12 Such a record of accomplishment is
13 outstanding, but now it is about to be undone by the
14 proposal in front of us for size standards. We feel this
15 is the work of staff not fully realizing and maintaining
16 the objectives of the President and the administrator of
17 the SBA.

18 Just yesterday, June 21st, there was an
19 editorial in the New York Times entitled, Lobbying From
20 Within. This editorial pointed out what might be
21 considered policy misapplications based on officials --
22 based on officials other than the party principals, the
23 President, and the SBA administrator being involved and
24 representing the interests of organizations perhaps from
25 which they came instead of from which they presently

1 belong, the Small Business Administration.

2 This is my fear now that some well-placed,
3 well-meaning individuals have lost sight of small
4 business, and therefore, the President's objective and
5 the President's policy. And if we remain silent, small
6 business will be undone based on artificially-imposed and
7 wrong standards.

8 In March 2004, the Small Business
9 Administration requested feedback from small business
10 regarding the size standard-related issues. After
11 overwhelming responses from over 6,000 businesses, over
12 90 percent of the responses were against the changes in
13 the size standards.

14 Now, over a year after that initial
15 comment period, the SBA is embarking on this 11-city tour
16 to gather more feedback. I and my company, and I assume
17 most -- many of you in the room, intend to be part of
18 that feedback.

19 What are our current issues? First, are
20 the current size standards difficult to understand? No,
21 I think they're not. They are very straightforward. A
22 hundred is a hundred, 500 is 500. Small businesses
23 generally tend to have less than 500 people. We consult
24 for companies across this country from mom-and-pop
25 organizations from less than 100 to our clients that have

1 other 275,000 people.

2 As an ex-Army officer, I know the
3 difference between a platoon and a division. A platoon
4 has 15 or 16 people; a division has 25,000 people. Okay.
5 A division is big business; a platoon is small business.
6 Let's not have the corporations start forming divisions
7 and calling them platoons, because even Ray Charles can
8 see that that's not correct.

9 Should the SBA establish a tiered system
10 of size standards? No. Because this, again, would
11 become a subterfuge. I am against the size standard
12 being tiered because what we need to do is enforce the
13 standards we have in place.

14 The standards we have in place are not
15 complicated. If we tier them, we complicate them.
16 Complicating things is -- will be an excuse for probably
17 poor administration. So let us move forward with the
18 simplified system.

19 What are the approaches of the -- what
20 approaches could the SBA take towards grandfathering
21 small businesses that may adversely impact any future
22 restructuring? Grandfathering actually should not be
23 allowed.

24 You know, as a small business -- a
25 minority-owned small business, a veteran-owned small

1 business, I have actually had people come to me and
2 attempt to create a deal which would essentially turn us
3 into a front for someone else.

4 We do not desire to be a front for someone
5 else. We desire to be our own entity standing on our own
6 two feet competing with other folks. And, therefore, any
7 allocation towards grandfathering would actually lead to
8 a subterfuge that could cause small businesses not to be
9 considered.

10 Should the SBA provide an exclusion from
11 affiliation for venture capital companies? Definitely.
12 Why? Very simply put: If you want to be a small
13 business, the ownership of the small business should be
14 at least 51 percent in the hands of operational people.

15 If venture capitalists seek to control the
16 majority of the company, they do not have an active
17 day-to-day interest in the company; therefore, they do
18 not have an operating interest in the company.

19 Basically, it is another way to form a
20 shield. So am I against venture capitalists being
21 involved in small business? Absolutely not. Am I
22 against venture capitalists being majority owners in a
23 small business? Absolutely.

24 MR. ALEXANDER: One minute.

25 MR. BELL: Finally, what are the ways the

1 SBA could clarify its affiliates' regulations? Well, I
2 agree with the basic regulations now, but let's not put
3 exemptions in for franchisees.

4 Since my time is running down, let me
5 summarize the recommendations. First, return to the
6 original SBA size standards that looks at a 100-employee
7 organization. We fit that model. We currently have 15
8 employees, 10 contractors. We also fit within the model
9 for the economic standards or the revenue measurement for
10 small business.

11 No grandfathering proposal, because
12 basically, it would harm small business.

13 There shouldn't be a tiered system because
14 it complicates how you would evaluate a small business.

15 Venture capitalists, as we said, important
16 to many industries, but should not have a majority stake
17 in any small business that is competing for federal
18 contracts. Because, again, that is just camouflage. And
19 since I'm an ex-Army officer, I know a little bit about
20 camouflage.

21 Also, the current size standards are not
22 difficult to understand. They are very straightforward,
23 a hundred is a hundred, six million is six million, if
24 you're in a personal services side. If you're in a
25 manufacturing side, I believe it's 17.5 and 500. That's

1 fine, also.

2 In closing, please keep in mind that over
3 90 percent of the responses received by SBA oppose the
4 SBA's most recent attempt to change its policies. Small
5 businesses are the backbone of America. They provide 75
6 percent of the net new jobs added to the economy, and
7 represent 99.7 percent of all employers. They employ
8 over half of the private sector work force, and 98
9 percent of all American businesses have less than 100
10 employees.

11 It's important to note that 89 percent of
12 all American businesses have less than 20 employees. The
13 SBA should be committed, as I believe they are, to
14 keeping small business for small business government
15 contracts from large corporations.

16 The goal is 23 percent of business for
17 small business. Again, small businesses being 99
18 percent. I think we're the 99 percent of business that
19 is fighting for 23 percent of the contracts.

20 If those big businesses that are maybe 0.3
21 percent, if we let them have the other 77 percent of the
22 business out there, I think they should be happy. They
23 don't need to have it all, and that's what this is all
24 about. So I think the SBA is here to protect the little
25 guy, and I think they've been doing a decent job of that,

1 and I hope they don't forsake us now.

2 Thank you. Sorry if I went over time.

3 MR. JORDAN: I think you referred to
4 "them," if I understood you correctly, as to the
5 proposals now on the table. There is no proposal at all
6 on the table. The only proposal was the one last March
7 2004 that we withdrew on July the 1st.

8 In December, that was an advanced notice
9 of proposal only, asking for comments directly related to
10 comments that we received from others that were not
11 considered in that proposed rule.

12 Others brought up grandfathering and
13 things like that. We did not bring that up. That did
14 not come out of the blue. This is nothing from the
15 office of size standards. It's not our proposal. It was
16 proposed by the public, by businesses.

17 Now, I haven't heard anyone say they
18 support it but -- so far today. However, there was
19 support for it in responses to the proposal last summer,
20 and that's why it's an issue now.

21 We're strictly asking for comments. What
22 we'll do with it, we don't know. But there is no
23 proposal on the table. We don't know if and when there
24 will be one, and when it will be at this present time.

25 MR. BELL: So what I understand, then, is

1 that that's an -- that's an item that is -- that is
2 currently up for discussion, so to speak, because people
3 ask --

4 MR. JORDAN: That's right. Because the
5 public, small businesses and large -- well, basically,
6 small businesses brought it up. Because of the proposal,
7 a lot of small businesses would have lost eligibility and
8 felt that perhaps they should be grandfathered.

9 And that's why SBA is now saying, what do
10 you think about that as an issue. Because others brought
11 it up without being asked, now we're asking everybody.

12 MR. BELL: Well, just in responding to
13 your comments, the concern I would have -- my concern
14 with grandfathering has not to do with small businesses
15 that meet the strict definition of the size standards
16 being considered small business.

17 It is when there are other entities
18 involved in that business that -- as I sat in Washington
19 last week talking with some folks, one of the -- one of
20 the assistant secretaries made it a point to me, says,
21 make sure your business is legitimately set up. Because
22 if your business is not legitimately set up, then we can
23 prohibit you or throw you out of federal contracting for
24 attempting to deceive someone on the basis of the
25 ownership of your business.

1 So anything that I have an interest in in
2 terms of grandfathering is to make sure that any
3 grandfather proposal would strictly meet the definition
4 in place and not allow other businesses to own or venture
5 capitalists to own a large share of a small -- own a
6 majority of a small business and still have it considered
7 to be a small business.

8 MR. JORDAN: Well, we certainly want your
9 opinion on that issue of grandfathering, but we do not
10 want you to understand the SBA has proposed this. That
11 is a common misperception out there.

12 MR. BELL: Well, I --

13 MR. JORDAN: The SBA has not proposed this
14 in any way, shape, or form.

15 MR. BELL: Well, if it will help you, you
16 and I are straight. I understand. You have not proposed
17 that, and I have stated an opinion on it.

18 MR. JORDAN: Thank you.

19 MR. BELL: Okay.

20 MR. BENDERSON: Carmen Garcia, Greater
21 Dallas Hispanic Chamber.

22 Sanjay Anand, International Tech.

23 Cynthia Gilmore, Express Professional
24 Staffing.

25 MS. GILMORE: Good morning. My name is

1 Cynthia Gilmore, and I am the owner of Express
2 Professional Staffing. I appreciate your time today for
3 allowing me to submit my testimony as the owner of a
4 small business. I have worked for very large
5 corporations as well as many small enterprises in the
6 human resource area of staffing and recruiting.

7 I have always wanted to operate my own
8 business that leverages my broad experience in customer
9 focus that I developed over the years. I found such an
10 opportunity when I purchased a franchise in Dallas, Texas
11 from Express Services just a little over a year ago.

12 As an HR professional, I'm in shock that
13 my business is being discriminated against. I do not
14 understand why my small woman-owned business is not
15 eligible for SBA loans, or that I cannot compete on a
16 level playing field for opportunities for certain
17 government and large jobs.

18 My products are the people or workers I
19 provide to my clients' businesses in the Dallas, Texas
20 area. I had the opportunity to build or purchase the
21 support processes and systems from a variety of sources.
22 I decided to purchase some of these services from my
23 franchiser.

24 My franchiser is in the business of
25 franchising and selling support services. I am in the

1 staffing business, and I have contracted with Express to
2 provide me support. We are not one entity, and Express
3 has no control over my business.

4 Please consider the following support
5 facts:

6 My business is an independent S
7 Corporation with my own federal identification number,
8 state and local tax identification numbers, workers'
9 compensation account, and state unemployment account.

10 My S Corp. is a small business which has
11 four employees.

12 I assign workers to my clients' businesses
13 that I have recruited, screened, interviewed, and hired.
14 I also train, discipline, and terminate as I deem
15 appropriate. I conduct these activities at my own
16 expense. I pay for all costs for marketing, advertising,
17 recruiting, background checks, testing, training, and
18 drug testing.

19 I pay for and am solely responsible for my
20 overhead, including the lease of my office space,
21 utilities, insurance, legal, and accounting costs. I am
22 responsible for repayment of any loans to fund my
23 business.

24 I also pay all applicable taxes, including
25 my federal income, state, and local. I pay the

1 employer's share of social security, federal and state
2 unemployment insurance, and workers' comp for my four
3 employees. I provide them with fringe benefits,
4 including health insurance and vacation and holiday leave
5 as outlined in my company handbook.

6 I believe that my agreement with my
7 franchiser may be different from other franchise
8 businesses that provide products or services to the
9 general public on a walk-in basis, such as retail office
10 supplies or restaurants. The following are my points of
11 differentiation:

12 I contract with Express to administer my
13 accounts receivable function. Express receives the
14 accounts receivable from my clients and takes a
15 percentage as payment for providing their services.
16 Express then remits the remaining funds to me. I bear
17 all the risk of collection of my client invoices and the
18 resulting loss if they are not paid.

19 Express processes my payroll and ensures
20 proper withholding and payment as per our franchise
21 agreement, but I am responsible for actually issuing the
22 checks to all my employees.

23 I hire and place temporary workers which
24 is my product, and Express serves as their employer of
25 record for federal withholding purposes to ensure

1 compliance with rules and regulations. I direct and am
2 responsible for all the day-to-day activities with
3 respect to the temporary workers I provide.

4 Both the franchiser and my business could
5 be considered employers of the temporary workers which is
6 my product, Express for payroll purposes only, and my
7 company for all day-to-day operations, management, and
8 oversight.

9 I bear all costs associated with
10 recruiting, hiring, assignment, and management. I also
11 bear all the risks of loss with my clients. The
12 franchiser merely processes the payroll from information
13 I provide, sends me a check file. I sign and issue the
14 checks.

15 In summary, the SBA should consider the
16 following when determining my small business status:

17 My business and the franchiser are
18 separate and independent businesses with no common
19 ownership or management. I bear the risk of financial
20 loss from my operation.

21 I control the day-to-day operations, and I
22 provided the financing for my business without recourse
23 for indebttness repayment to the franchiser. I retain the
24 profit for my business operations.

25 Questions?

1 MR. ALEXANDER: One question. You
2 mentioned that you were not eligible. Have you talked to
3 someone in SBA to tell you that you are not eligible for
4 that?

5 MS. GILMORE: That has been my
6 understanding from the brief conversations I have had
7 when I was initially trying to fund my business.

8 MR. ALEXANDER: Okay. Well, did someone
9 from SBA tell you that, or did a lender tell you that?

10 MS. GILMORE: A lender actually told me
11 that.

12 MR. ALEXANDER: Okay. I'd like to just
13 visit with you after this.

14 MS. GILMORE: Okay. Thank you very much
15 for your time.

16 MR. BENDERSON: Thank you.

17 Mary Alice Garza, Vice President,
18 Geo-Marine, Inc.

19 MS. GARZA: Good morning. Thanks for
20 being here. Excuse me. I am Mary Alice Garza with
21 Geo-Marine, Incorporated, an environmental engineering
22 firm located in Plano, Texas. We are a graduated 8(a)
23 company. We've been in business since 1972, and we're
24 currently classified as a small business under a couple
25 of NAICS codes. Only those that are under 500 employees.

1 We -- our environmental consulting
2 employment figures fluctuate with as many as 180
3 employees in the year depending upon our field efforts.

4 SBA's proposal to simplify standards by
5 basing them on number of employees states that its goals
6 are to minimize the burden of small businesses, and not
7 to adversely impact current small businesses. SBA's goal
8 should also include keeping current businesses strong so
9 they can compete in the federal marketplace, as well as
10 in the commercial arena.

11 If the proposed changes are adopted, this
12 ruling will, in effect, impede potential growth to those
13 businesses that want to be able to outgrow their size
14 standards, and to be able to compete in the federal -- in
15 the open marketplace. So the SBA proposal both increases
16 the burden and adversely impacts small businesses.

17 The number of employee standard. I've
18 heard quite a few people speak against it. It can be
19 used with the caveat that the temporary employees be
20 eliminated. It should be converted to full-time
21 employees. It should not be the previous 12 months. You
22 would have to be calculating your average employment
23 every week. You'd have 52 averages during the year. It
24 would be a very burdensome calculation.

25 The proposed standards are detrimental to

1 many businesses and will eliminate certain categories
2 from being included as small businesses. In the last 10
3 years, there has been a great consolidation in the
4 marketplace of environmental consulting firms, so that
5 most large firms now have tens of thousands of employees.

6 In addition to these commercial firm
7 mergers, the federal government has extensively practiced
8 bundling of contracts, thus making it even more difficult
9 for small firms to compete for these procurements.

10 And even when the small firms team with
11 the large firms, the larger firms control the kind and
12 amount of work that the subcontractor is able to perform.
13 By establishing a dollar maximum in addition to the
14 number of employees for a service company will be an
15 unduly burden, and possibly thwart the company in
16 competing with these large megaservices environment
17 firms: URS, Haliburton, SAIC to name a few.

18 To maintain one employee, we must generate
19 \$100,000 in revenue; therefore, 400 employees translates
20 to a \$40 million revenue, the proposed standard. Yet
21 this 400-employee company must compete with these
22 megafirms that have tens of thousands of employees. A
23 company should not be limited to only one NAICS size
24 standard.

25 All of these concepts may be appealing to

1 those businesses that are currently under the six million
2 size standard. The idea will have severe limitations
3 once you start to grow. You should have a vision for
4 growth. A small business grows by adding skills and
5 making itself eligible in multiple NAICS sizes that are
6 interrelated.

7 For instance, a sewage treatment facility
8 standard is six million, whereas the water and sewer line
9 construction is a 28 million standard. How can a small
10 business transition from one level of service to the next
11 if they always have to stay under the six million size
12 standards?

13 The 500-employee size standards should not
14 be reduced. I've heard some speak to reducing it back to
15 the 100. It would adversely impact the environmental
16 consulting business. There are not too many of us in the
17 small business world that are in environmental
18 consulting, but it would adversely impact us.

19 To provide environmental services, we
20 require many scientific disciplines. We currently have
21 over 30 different specialized scientific disciplines in
22 our business. You can see that 30 people -- you have the
23 multiples of each category.

24 To include the temporary workers would
25 discourage small businesses from hiring interns or those

1 who choose to work part time due to disability or family
2 needs. So the size standard definition with the -- of
3 employee size would artificially -- of temporary
4 employees would inflate the employee count.

5 The current 500 size standard should be
6 retained with full-time employees counted only. And I
7 would even propose, although some people have said that
8 tiering would create more confusion, to have some
9 additional tiers, 250, 500, 750, and 1000, so that you
10 would have different levels, and the small businesses
11 then would be able to grow and compete with the
12 megacompanies.

13 The changes that SBA imposes should be to
14 enhance eligibility requirements and foster the
15 development and growth of businesses.

16 I had a statement about grandfathering,
17 but you've clarified that, that grandfathering is not
18 part of your decision. Should current small
19 businesses --

20 MR. BENDERSON: You have one more minute.

21 MS. GARZA: Pardon?

22 MR. BENDERSON: You have one more minute.

23 MS. GARZA: I'm just about finished.

24 Thank you.

25 Should current small businesses be thrown

1 into open competition markets under these proposed rules,
2 the result could be disastrous for the companies as well
3 as the general economy.

4 MR. BENDERSON: Thank you.

5 MR. JORDAN: I have one question, please.
6 If I understood you correctly, if a company is under the
7 \$6 million size standard for environmental consulting,
8 you do not think it's eligible for a contract for sewer
9 lines?

10 MS. GARZA No, it's eligible.

11 MR. JORDAN: Yes, it is.

12 MS. GARZA: But it's difficult to
13 compete -- if you're a \$6 million company to compete with
14 a \$28 million company.

15 MR. JORDAN: So you think it should be 28
16 million for all, or you think --

17 MS. GARZA: Perhaps tiered.

18 MR. JORDAN: I see.

19 MS. GARZA: Because microbusinesses do
20 need some protection.

21 MR. JORDAN: Because size standards are
22 based on not the size of the business, itself, a class of
23 business, but the nature of the contract. The NAICS code
24 is matched to the contract for purposes of the contract,
25 and 28.5 is there for larger businesses to compete on

1 that type of a contract.

2 Whereas based on what we know so far, and
3 we're getting more feedback, environmental consulting is
4 for small businesses, so -- we get these kind of calls
5 all day long. I just wanted to make sure I understood.

6 MS. GARZA: And there are not a great
7 number, you know, in your 96 percent of small business in
8 the United States -- businesses are small in the United
9 States. It's a very small percentage that are
10 environmental services.

11 MR. JORDAN: Yes, it is. Thank you.

12 MR. BENDERSON: Don't forget to leave your
13 prepared remarks with Anna Marie. And if you have an
14 extra copy, the court reporter could use one, too.

15 MS. GARZA: Okay.

16 MR. BENDERSON: We'll now hear from
17 Mr. Gene Rouleau of GRA, Inc.

18 MR. ROULEAU: I'm Gene Rouleau. I'm
19 chairman of GRA, Incorporated. We are a company that
20 provides general management consulting and HR services --
21 consulting services to federal agencies. We've been in
22 business for about 10 years. Our revenue last year was
23 just under \$6 million.

24 I'd like to echo what many have said
25 already, that we favor a receipts-based standard. We

1 like 10 million as the standard, and we could live with
2 that. The coupling of the notion of head count to
3 revenue poses a problem for us in this respect. We have
4 three full-time employees, and last year we had on
5 average, every two weeks, 49-something employees.

6 When we did the calculations as if the
7 standards that were proposed applied to us at the time,
8 the way it worked out is that we were within 0.8 of 50
9 employees if the SBA intended to include intermittent
10 employees, which is 99 percent of our work force.

11 And so we would have faced the
12 circumstance of meeting the \$6 million standard either
13 last year, this year, or next year, and have, if you
14 will, essentially, 26 full-time equivalent employees.

15 So from our standpoint, we much prefer a
16 receipts-based standard. Several people have already
17 commented that a receipts-based standard is transparent.
18 You can check tax returns. Tax returns, when people file
19 them and they do something that's dishonest, they're
20 subject to criminal penalties. I kind of like tax
21 returns as a nice arbiter of what is the size of the
22 business that we're talking about.

23 If you don't like tax returns, I think a
24 CPA-prepared or audited financial statements would give
25 the SBA an opportunity to see that a company still, in

1 fact, qualifies against the small business standards.

2 And I'd like to see small businesses,
3 including ours, be required to send you financial
4 statements at least every 12 months as a method of you
5 assuring that the company, in fact, is a small business,
6 that the revenue that's been recorded by that business
7 has been put into the proper financial forms by a CPA,
8 and that you have some sense of integrity within the
9 system.

10 We thought of a moniker for the SBA
11 approach that had to do with bundling together full-time,
12 less than full-time, intermittent, and what some here
13 today have called temporary employees. We called it the
14 names on a payroll -- the names-on-a-payroll approach.

15 And it's that which we really object to,
16 because as a company relying so heavily on intermittent
17 employees, we literally would be out of the small
18 business category very prematurely under that kind of
19 standard.

20 We much prefer the full-time equivalent
21 standard, but we almost need to quickly hasten to add
22 that we prefer no standard on employees if we had a very
23 solid annual recertification based on financial
24 statements that shows receipts -- the actual receipts of
25 the business. That's the simplest, we think, and the

1 fairest, and the most common measure available.

2 So our preferred options for SBA are, we
3 like 10 million in receipts for small business in the
4 codes in which we compete. Two of them right now are \$6
5 million codes, because we think there is a very
6 substantial difference.

7 I think Oliver, the gentleman who spoke to
8 us a few rounds ago, made the comment that as a former
9 Army officer, he could tell the difference between a
10 platoon and a division. I'm a former Marine officer. I,
11 too, could understand the difference between a platoon
12 and a division.

13 And it seems to me that if we take a \$10
14 million receipts, at least in the NAICS codes that we're
15 in, that that's a very clear standard that everybody
16 could either meet or not meet. And if you annually
17 recertify, suddenly everybody knows who's in the game and
18 who isn't under the small business requirements.

19 So if we couldn't get a straight receipts
20 approach, we prefer having FTE, full-time equivalency, be
21 determined. Just take the total number of hours that you
22 paid to employees and divide it by 2,087, and suddenly
23 you've got a full-time equivalent. If you're going to
24 impose a head count requirement with the monies, let's
25 just divide the total hours paid for by 2,087 to see

1 where we stand.

2 We don't favor tiered systems,
3 grandfathering, exclusions for venture capital, or the
4 comprehensive test program. A couple of people up here
5 at the podium before me have made veiled comments to the
6 effect that there is a lot of gaming going on in federal
7 contracting in which we have contracts that appear to be
8 won by small businesses, but, in fact, a large percentage
9 of the revenue basically goes to large companies behind
10 the scenes.

11 We've been approached within the last --
12 I'm just thinking, in the last 12 months, we've been
13 approached several times by large businesses -- I'm
14 talking billion dollar companies -- who wanted us to
15 front for them. And somebody else had said here at the
16 podium that this is not uncommon. And I guess I'm just
17 trying to confirm the comment of the previous speaker,
18 that it's not uncommon.

19 And I understand that under the GSA supply
20 schedules, that as long as we have 51 percent of the
21 revenue, it's an okay transaction. That's the only type
22 we would consider. But I wanted to say it's happening
23 all the time in federal contracting where you have a very
24 small company that gets the award, but you see a big
25 stream of revenue going out to many of billions of

1 dollar-type companies.

2 That concludes the comments that I wanted
3 to make, and I appreciate the fact that many of you
4 stayed awake. And those of you with your eyes shut, I
5 know it was deep meditation. Thank you.

6 MR. BENDERSON: Thank you very much.
7 Please leave a copy with Anna Marie.

8 MR. ROULEAU: I have. Thank you.

9 MR. BENDERSON: And if you have an extra
10 copy for the court reporter.

11 MR. ROULEAU: I don't have the extra copy,
12 but...

13 MR. BENDERSON: Belinda Davis, President
14 of DGR Associates, Inc.

15 MS. DAVIS: Good afternoon. My name is
16 Belinda Davis, president of DGR Associates. I am an 8(a)
17 WBE and also an MBE, and I've been existing in business
18 for 15 years. I am primarily a Department of Defense
19 contractor. I take care of military family housing and
20 real proud of it. I -- I'm only here to share some
21 information with you.

22 I've been listening to what everyone has
23 to say, and it's been so informative for me. And if I
24 were to say just one thing, is that I'm a grateful small
25 business person of SBA.

1 I came here today and I realize, this is
2 where I was born 15 years ago. I came here and
3 self-certified 15 years ago here at this very
4 institution. And I thought to myself, wow, I'm here
5 again, and it was really great. And I'm proud.

6 I'm also a product, a great product of
7 what a small business has been. For 15 years I've been
8 able to capture contracts throughout the United States.
9 SBA has been there with me as an 8(a), a woman-owned
10 minority. It's been there.

11 I've been recognized through SBA. I was
12 awarded Small Business Prime Contractor of the Year in
13 the year 2003. And then 2004, I was awarded Small
14 Business Person of the Year in our region. And when I
15 was -- went to DC in September, I was blessed with
16 getting national.

17 So, you know, we are -- I appreciate SBA.
18 I really do. But there -- then there's the other side of
19 the coin, is that, you know, what we count on is SBA to
20 enhance -- to enhance the small businesses that are
21 existing today, and give opportunities to the new
22 businesses also.

23 So, you know, my standing -- I sit here --
24 or I stand here and I say, what does the existing
25 standards cause? What problems with the existing

1 standards do we have going on today? What are the cause
2 and effects? Are they really, truly causing us problems
3 as small businesses?

4 And if it is, yeah, we want them to be
5 fixed. We -- we count on the system to help us, you
6 know. But then I have to sit there and look at the
7 gentleman with Four Winds. If it's not -- if it's not
8 broken, don't fix it. But we do count on your support as
9 small businesses to help us enhance -- help us grow.

10 I guess I am opposed to changing the
11 employee standards. And I think to myself, okay, what is
12 the true answer to this dilemma that evidently has been
13 created? And I'm thinking, well, is it really the people
14 count going through the door?

15 Because I'm a service contractor, and I
16 bid my contracts by positions. I don't -- you know, I
17 don't bid them by the number of people. Like, how many
18 people am I going to employ this year? That's not how I
19 bid my contracts. I bid my contracts to service the
20 contract, to give them the best performance that I can
21 possibly give them.

22 And I expect to be paid with my due
23 diligence, with my -- I put myself on the line. I put
24 my -- I go out there and somebody was in the franchise --
25 I can't remember -- saying, you know, I'm responsible for

1 all these things, and I feel blessed that I am
2 responsible for all these things. And how many people
3 can go and start a new business or even exist a new
4 business? It's really hard.

5 So I sit there and say, is it the people
6 count that we really need to look at, or is it the
7 position for what our business is trying to provide? I'm
8 trying to provide a service for over 9,000 military
9 family houses. I -- that's what I take care of right now
10 today.

11 I take care of over 9,000 military family
12 houses, and I enjoy that. And I tell you, if the
13 proposal was what the proposal was last year, my doors
14 would have been shut. And so I'm not in favor of the
15 size standards.

16 I'm much in favor of maintaining what we
17 have. And if there are changes, let them be gradual, not
18 let them just pull the rug from underneath us. We need
19 your help every day.

20 We're -- you know, we're still children,
21 and we still -- we still try to do the best we can. I
22 think that we all try to do the right thing. That's what
23 my business is really based on, is doing the right thing,
24 giving the best service, you know, going out there and
25 working with everybody else.

1 Keep the employee standards or make them
2 better. Keep the receipt revenue just like it is with
3 the average. Those work for me. I know they work for a
4 lot of people. And I appreciate the time you've given me
5 today. Thank you.

6 MR. BENDERSON: Thank you. Any questions?

7 Walter Roberts, General Manager, Able
8 Security & Investigations.

9 David Rawlinson, Kirkpatrick & Lockhart,
10 an attorney.

11 MR. RAWLINSON: Good morning. My name is
12 David Rawlinson. I'm an attorney with the law firm of
13 Kirkpatrick & Lockhart Nicholson Graham in their Dallas
14 office. Kirkpatrick & Lockhart, or K&L, is an
15 international law firm with about 900 attorneys spread
16 throughout 12 offices.

17 K&L represents an innumerable number of
18 venture capital firms and small businesses, and has a
19 practice group that specializes in representing contract
20 companies who are pursuing or have federal government
21 contracts.

22 I speak today to urge the SBA to amend the
23 SBIR size and ownership regulations, and to allow for
24 greater participation in the SBIR Program by businesses
25 that are over 51 percent owned by venture capital

1 companies.

2 As they are currently interpreted, these
3 rules unduly limit the participation of venture
4 capital-based firms and undermine the stated purposes of
5 the SBIR Program, to use small businesses to stimulate
6 technological innovation and to facilitate the ability of
7 participating firms to attract venture capital
8 investment. The unfortunate result of the rules as they
9 are currently written is to put many promising, neglected
10 innovations out of the reach of the SBIR Program.

11 Proponents of the current status quo have
12 argued that venture capital-backed firms have already
13 demonstrated that they can secure private investments.
14 Thus, they argue, allowing them to receive SBIR funds
15 diverts critical and limited resources to businesses that
16 already have funding opportunities available and away
17 from businesses that can't innovate without government
18 help. This argument fails to take into account the
19 on-the-ground realities of most venture capitalist-backed
20 businesses.

21 Venture capital funds are investment
22 funds. Their principle focus is on realizing returns for
23 investors. While sometimes this means the VCs will be
24 interested in risky, unproven, or nascent technologies,
25 most of the time they focus on technologies where the

1 return is more immediate and apparent. Often, in fact,
2 it is while they are working on these lead programs that
3 they discover other opportunities that they will want to
4 test before soliciting for the funding.

5 Usually, venture-backed -- capital-backed
6 companies will need to raise funds in more than one round
7 of financing, and are typically backed by more than one
8 VC. For example, in a recent survey by the Biotechnology
9 Industry Organization, they found that the ownership
10 stake of individual VCs was on average less than 20
11 percent, and more than 70 percent of their members were
12 owned by multiple VCs.

13 While these VCs generally do not have a
14 controlling interest in the business, they do often serve
15 on the boards of directors, and thus are in a position to
16 affect the priorities and the organization and the budget
17 of the business. As a consequence, promising
18 technologies that do not immediately show the potential
19 for short-term commercial success are unlikely to receive
20 the necessary funding as the lion's share of the
21 resources go to more mature projects.

22 It is precisely the projects that venture
23 capital-funded businesses are often forced to neglect
24 that the SBIR Program was enacted to cultivate. By
25 excluding businesses that are over 51 percent owned by

1 venture capital companies, the -- the regulations
2 summarily exclude this fertile ground of innovation.

3 This injury is compounded by the fact that
4 it is these very companies, companies that have shown the
5 competence to attract significant venture capital, that
6 are the most likely to be able to successfully develop
7 and commercialize useful technologies.

8 It simply makes no sense to exclude the
9 very companies who the private sector has, through its
10 investment, validated as the most able to innovate from a
11 program whose sine qua non is innovation.

12 Because of the limited time allotted for
13 my comments today, I'm unable to go into some of the
14 other current flaws of the regulatory framework,
15 including the particular harm that the current
16 regulations cause biotechnology and nanotechnology-based
17 businesses, the effect on minority and women-owned
18 businesses who may be more dependent on outside funding
19 sources, and the increased potential for repeat award
20 winners.

21 In closing, for many technology-based
22 small businesses, government investment is only one leg
23 of a stool. Internal funding and venture capital are
24 also necessary second and third legs that provide the
25 financial resources and stability needed to innovate.

1 The current regulatory scheme forces these companies to
2 make a Hobson's choice between SBIR and venture capital
3 funding.

4 When Congress passed the Small Business
5 Innovation and Investment Act of 1982, it was hoping to
6 supplement and spur venture capital investment, not to
7 create disincentives for venture capital involvement.

8 Amending the current regulations would
9 harmonize these two currently dissonant funding
10 sources, and that is good news for the SBIR Program, the
11 cause of innovation, and most importantly, the companies
12 who are most able to ensure that new and exciting
13 technologies reach the American consumer and the American
14 government.

15 I'll entertain any questions.

16 MR. BENDERSON: Yes. Do you think that
17 this whole issue about venture capital funding and taking
18 control of certain companies would be better done instead
19 of across the board, perhaps in some fields like the
20 medical field where there's a long lead time? Would that
21 make sense?

22 MR. RAWLINSON: Well, I'm hesitant to
23 recommend that you -- you complicate the standards. As
24 it stands now, I think they're relatively simple and easy
25 to understand. That being said, I think there are

1 particular sectors where the need for venture capital
2 investment is so extreme. For instance, biotechnology
3 and nanotechnolgy, which are particularly affected.

4 And it seems to me, more often than not
5 are places where the venture capital companies, the
6 interest tends to be diffuse. So in other words, you
7 have three, four, five, venture capital companies who are
8 investing. And as it currently stands, I don't think the
9 regulations makes sense in this treatment of those
10 companies.

11 So I think it's a very hard choice between
12 unduly complicating the regulations, and being able to
13 help those industries where it's particularly
14 problematic. Given that choice, I would err on the side
15 of making sure that businesses who need SBIR help can get
16 it.

17 MR. BATEMAN: The smaller business?

18 MR. RAWLINSON: Yes.

19 MR. BENDERSON: Okay. Thank you.

20 Rudy Gonzolas, President of Builtek
21 Contractors, Inc.

22 Cecil Starks, President, Purple Building
23 Technologies, Inc.

24 Robert Gracy, Technology Business
25 Development.

1 Let me go back to some of the -- David
2 Wallace.

3 MR. WALLACE: Yeah, I'm here.

4 Can everybody hear me without the mike?
5 Okay. Thank you, gentlemen. My name is David Wallace.
6 I'm vice president of MicroFab Technologies,
7 Incorporated. We're a technology-oriented small business
8 in Plano. We're 21 years old and a participant in the
9 SBIR Program.

10 I'm testifying at this meeting to express
11 my opposition to grant an exclusion for venture capital
12 companies from the affiliation rules for determining
13 eligibility for the SBIR/STTR program. My reasons are as
14 follows:

15 Granting an exclusion would -- although
16 the primary purpose would be to benefit small businesses,
17 it would also significantly benefit venture capital
18 firms, and I believe this is in conflict with the
19 intention of the SBIR legislation. As a side benefit to
20 benefitting venture capital firms, it would also benefit
21 the support firms, such as law firms and accounting
22 firms, and they will be supporting this change.

23 Venture capital -- and it may be a very
24 positive policy goal to aid -- venture capital firms to
25 aid specifically small business firms, but it's not a

1 policy that's intended from the SBIR legislation. It
2 would be a policy that would be more consistent with the
3 ATP program.

4 Venture capital firms are not interested
5 in keeping small businesses small, but they're only
6 interested in ones that become -- that can become large
7 companies. They're not interested in encouraging a large
8 base of independently-owned small businesses, as is the
9 intent of the SBIR legislation, thus creating another
10 conflict with the intent of the legislation.

11 Creating an exemption would potentially
12 put reenabling of the legislation -- and the SBIR
13 Program is reenabled every -- how many years -- six
14 years, four years. It's not -- the SBIR Program doesn't
15 exist in perpetuity; it is reenabled periodically.

16 And I believe making a rule change that
17 would specifically benefit venture capital firms would
18 put the SBIR Program reenabling at risk and subject to
19 the criticism that the SBIR Program provide the subsidy
20 to, quote, rich venture capital firms.

21 Now, if the current popularity of this
22 program makes this concern seem farfetched, I think you
23 only need to look at the history of the NIST ATP program
24 that started out to be a very broad-based
25 bipartisan-supported program, and turned into one that is

1 one of the most contentious programs with partisan budget
2 battles every year enabled by the phrase, "the government
3 picks winners." So I believe this would be a very risky
4 thing for the program overall.

5 If venture capital firms were granted an
6 exemption, it would be difficult to justify not extending
7 the same exemption to universities, nonprofits such as
8 The American Heart Association, and religious groups that
9 fund medical research. Again, this would be both
10 contrary to the intent of the enabling legislation and
11 put the program, itself, at risk.

12 And, finally, assisting small businesses
13 with the admirable goal of obtaining venture capital
14 funding, if they want it, should not be confused with
15 aiding venture capital firms, themselves. And I believe
16 the current structure of the SBIR Program achieves the
17 former without wandering into the latter.

18 Thank you.

19 MR. BENDERSON: Any questions?

20 Is Rudy Gonzolas here?

21 MR. GONZOLAS: Yes, sir.

22 MR. BENDERSON: Builtek Contractors, Inc.

23 MR. GONZOLAS: Yes, sir.

24 Well, first of all, I want to thank you
25 for allowing me to come and testify. My name is Rudy

1 Gonzolas. I'm the owner of Builtek Contractors, a small
2 business 8(a) certified company out of Albuquerque, New
3 Mexico. But more importantly, I'm also here testifying
4 on behalf of the New Mexico 8(a) and Minority Business
5 Association which represents 150,000 -- I apologize, over
6 150 8(a) firms in New Mexico and nationally.

7 We are very active in national small
8 business issues and work closely with the U.S. Hispanic
9 Chamber of Commerce in Llama. Although, I would like to
10 say that our organization is solely funded by our
11 membership dues, and we don't depend on large corporate
12 sponsorships or government grants in any form to maintain
13 our independence.

14 In recent years we've seen that -- the
15 assault on small business contracts. They've declined
16 since their height in the late '80s due to a
17 proliferation of things, like contract bundling and the
18 proliferation of socio-economic categories that do not
19 solely rely on size or disadvantage. In fact, some of
20 these other socio-economic categories have unlimited sole
21 sourcing amounts, and that has really hurt small business
22 programs.

23 But more insidious than the socio-economic
24 and the carving up of the small business pie, are
25 companies, large businesses that fraudulently and

1 reprehensibly misrepresent themselves as large businesses
2 in order to gain small business contracts from the
3 federal government.

4 It is our testimony today that the SBA's
5 proposed changes to the size standards will, 1, allow
6 businesses that are truly large businesses to participate
7 in the small business arena. And, 2, the proposed
8 changes will, rather than simplify small business size
9 standards and the designation process, they'll further
10 obfuscate the -- and complicate the SBA's ability to sort
11 out small business from large, and will hinder rather
12 than help SBA's ability to ferret out and prosecute
13 fraudulent misrepresentations by large businesses as
14 small.

15 It is our testimony that rather than spend
16 the time and effort reclassifying, regrouping, and
17 restructuring small business size standards into tiers to
18 satisfy the clamor of large businesses and a few small
19 businesses, the SBA should rather focus on enforcing the
20 current standard and aggressively investigating,
21 indicting, and punishing firms who knowingly and with
22 fraudulent intent represent themselves as small
23 businesses in order to gain small business contracts.

24 On the question of annual recertification,
25 we are -- we strongly support annual recertification on

1 multiple award contracts.

2 On the question of changing the
3 affiliation rule, we strongly oppose changing the
4 affiliation rule on behalf of franchisees. Sure, it
5 might help a few of them, but it's really letting the
6 camel's nose into the tent, because then that will allow
7 small -- I mean, allow large businesses to set up fronts,
8 basically.

9 You know, right now, we have enough
10 trouble ferreting out the -- with the rules that we have
11 now, we have enough trouble finding out who's
12 misrepresenting. This is going to allow large businesses
13 to, basically, set up a small company and say, hey, we're
14 a small business and get small business contracts.

15 On the question of establishing a
16 multitiered standard, our association strongly recommends
17 against this. The SBA is now having trouble enforcing
18 current standards. Multitiered standards would only
19 serve to complicate the process and allow more
20 opportunities for fraud.

21 On the question of grandfathering, our
22 association is opposed strongly to grandfathering as,
23 again, it would allow large businesses to continue
24 pilfering from the already shrinking pool of small
25 business contracts.

1 Small business was set up so that you
2 graduate into a large business, not so that you could be
3 on a set-aside program for the rest of your life.

4 On the question of increasing size
5 standards, our association is against increasing size
6 standards unless it's done on an industry-by-industry
7 basis looking at the -- at the needs of those industries
8 because they are different.

9 On the question of employee-based
10 standards, we oppose counting part-time employees and
11 leased employees, and we would only ask that full-time
12 employees be counted.

13 In closing, our association strongly feels
14 that the SBA's proposed changes have been driven by large
15 business interests, and that these will hurt small
16 business.

17 One other thing on the question of
18 grandfathering, and I have a document here where
19 grandfathering is being proposed. We are strongly
20 against grandfathering, again, for the same reason.

21 This was made -- these programs are made
22 so that you could graduate and become a large viable
23 firm. If you have exceeded those standards, you should
24 not be allowed to remain indefinitely or even for any --
25 any -- one day longer than your -- than your term says

1 that you should be there.

2 MR. ALEXANDER: One minute.

3 MR. GONZOLAS: Finally, I'd like to say
4 that one of the most important things of the SBA is to
5 protect small businesses. That's in your mission
6 statement. A small business is defined by the SBA as a
7 company that is independently owned and operated by an
8 individual or group of individuals, not one that is
9 affiliated with a larger corporation. And it is, again,
10 from the SBA's own Office of Inspector General.

11 We feel the same way, that if the SBA
12 would focus on enforcing current standards and enabling
13 its district offices to go after misrepresentations, we
14 would not be needing to change the rules at this time.

15 I'd like to quote here from the SBA OIG
16 Report No. 5-14, February, 24, 2005. It would have taken
17 only a short amount of time to find this information. If
18 SBA had put as much effort into verifying whether the
19 company currently met the award size standards as it put
20 into trying to find ways to earn credit towards the small
21 business goals, then perhaps the contract action would
22 have been awarded to a company that was legitimately
23 small at the time of the award.

24 I'd just like to thank you for your time,
25 and once again just say that, let's focus on the current

1 laws, the current standards. Let's make those work
2 before we throw out another set of complicated standards
3 that are only going to make things muddier, that are only
4 going to make it easier for large businesses to
5 misrepresent, and that are going to hurt this country's
6 small businesses.

7 Ninety-eight percent of our small -- of
8 our businesses in this country have 100 or less
9 employees. So anything dealing with tiers or with --
10 anything dealing with tiers or with any standards that do
11 not take this into account will only hurt us, not help
12 us.

13 Thank you very much.

14 MR. BENDERSON: Thank you. We have one
15 question.

16 MR. GONZOLAS: Yes.

17 MR. BENDERSON: You can't get away that
18 easy.

19 MR. JORDAN: Mr. Gonzolas, perhaps I can
20 alleviate some of your concerns for your association. I
21 think you may have not been here for the comments
22 earlier.

23 The document you have in your hand is not
24 a proposal. That's an advance notice of proposed
25 rulemaking based upon comments that SBA received to a

1 proposed rule last summer. SBA has not proposed any
2 issue that's in that advance notice. There is no
3 proposal now on the table.

4 There has not been any proposal as to
5 tiers. There has not ever been a proposal to include
6 grandfathering. These are issues that were brought up by
7 the public to the SBA's proposed rule that we issued last
8 summer, and ultimately withdrew, but there never has been
9 a proposal that includes any of these 10 issues. None of
10 those issues have been proposed nor are any of them being
11 proposed now.

12 MR. GONZOLAS: Okay. Well, just in case
13 they ever do, we're against them.

14 MR. JORDAN: That's exactly what we want
15 to know, whether you're for them or against them. The
16 reason we are bringing them up is, we have a proposed
17 rule, and these are 10 additional issues that the public,
18 such as you and other associations and companies, brought
19 to our attention that we felt we should get additional
20 comments on. And then we'll decide what we're going to
21 do.

22 Now, you, among others, have opposed it
23 this morning, but in the comments last summer, people
24 supported it. So we're getting both sides, and that's
25 what we want to know. But SBA has not proposed a thing.

1 There is no proposal out there right now. There hasn't
2 been, and SBA does not know if and when it will issue a
3 proposal, and what it will contain if there is one based
4 on these comments at the present time.

5 MR. GONZOLAS: Well, thank you for that
6 clarification.

7 MR. JORDAN: I hope that will alleviate
8 your members, because there -- there is a
9 misunderstanding or a misinterpretation of that advance
10 notice. Advance Notice for Proposed Rulemaking,
11 unfortunately, is a legal term we have to use. It's in
12 the Federal Register.

13 But we tried to make it clear, and we
14 thought we were successful in making it very clear that
15 we're not proposing anything. We're gathering
16 information in the event we put out a proposed rule in
17 the future. That's all we're doing. No SBA proposal
18 here.

19 MR. BENDERSON: Yeah. Just so the
20 audience understands, proposed notice of proposed
21 rulemaking is soliciting ideas, considering ideas. So
22 some of you may be shocked, saying, my god, this is a
23 proposal on the table, but it's a valuable process with
24 the government in advance of issuing a proposed
25 regulation. It solicits ideas from the public.

1 I know that venture capital and the SBIR
2 is a very important topic, so it's very valuable what
3 you're doing here. But it's not synonymous with a
4 proposal that the government is currently considering.
5 They're soliciting proposals and ideas that they can
6 maybe use in future rulemaking. So it's a valuable
7 thing.

8 MR. GONZOLAS: Well, with all due respect,
9 I guess maybe what we should be getting from the public
10 and hearing is how do we enforce what we have in place
11 now, rather than how do we change it. It's like if a
12 county sheriff were to say, we have a lot of speeders out
13 there, why don't we just -- you know.

14 MR. JORDAN: Well, unfortunately, those
15 issues are beyond the concept and the purpose of what
16 this proposal is all about, and the advance notice of
17 proposal, and these hearings. Those are not subject to
18 this hearing. It has to do with the size standards, and
19 the 10 issues that are brought up in there, and the SBIR
20 thing.

21 MR. GONZOLAS: Yes, sir.

22 MR. JORDAN: It's a really common
23 misconception out there that the SBA has proposed these
24 things, and SBA has not done that.

25 MR. GONZOLAS: Thank you for the

1 clarification. Thank you very much.

2 MR. BENDERSON: Thank you. I thought now
3 what we would do is go back to some of the speakers that
4 registered, but perhaps for one reason or another weren't
5 here at the time their name was called.

6 Andy Ellard.

7 Catherine Sedwick.

8 Frances Hellon.

9 Ahunsimhenre Arheghan, Hunsi Group.

10 Johnnie F. P.

11 Mary Dunseith.

12 Terry Cowan.

13 Cynthia Fitzgerald.

14 Rodney Williams.

15 Juanita Burgoon.

16 Susan Vandament.

17 Katharine Keyes. I'm sorry. Katrina
18 Keyes. I apologize.

19 Carmen Garcia.

20 Cecil Starks.

21 Robert Gracy.

22 Okay. We have two possible additions,
23 Bernie Siben of The Siben Consult, LLC. Welcome.

24 MR. SIBEN: Thank you.

25 Good morning. I was not intending to

1 speak this morning, but I was a little disturbed that
2 there seemed to have been so many no-shows, and I was
3 afraid that maybe it would be interpreted that just the
4 Dallas and the Texas region really wasn't concerned about
5 these changes. Also, some of the things that I've heard.

6 My name is Bernie Siben, and I'm the
7 president of The Siben Consult. We're a marketing
8 consulting firm that works for firms in the building
9 environment, so engineers, architects, surveyors,
10 environmental scientists, construction managers, et
11 cetera.

12 And I don't really have a problem with the
13 size standards, although I would really like to see some
14 stiff penalties in place and enforced for firms that find
15 ways to get around that or misrepresent themselves,
16 because I think that the whole spirit of SBA is to be out
17 there protecting, and fostering, and enabling the
18 formation and the growth of small businesses.

19 And whether we're talking simply small or
20 minority or disadvantaged or a woman owned or 8(a) or HUB
21 or whatever other definition, the SBA's purpose is all
22 about helping these firms. And I think that when other
23 firms get around the standards or misrepresent themselves
24 to take work away from these smaller firms, that this is
25 the place where SBA needs to sort of stand up with a big

1 stick and make them wish they hadn't done that. And the
2 penalty needs to be way in excess of the fees that could
3 have been earned so that maybe they'd get a little
4 scared, and don't keep trying to do this.

5 In terms of the dollar figures rather than
6 size standards -- I understand why size standards are
7 different in different kinds of industries and different
8 kinds of service areas, and -- and I have no problem with
9 that. But I think that both the size standards and the
10 dollar standards need to be more relevant.

11 I worked for an engineering and
12 environmental consultant some years ago when we tried to
13 raise the size standards at that point from \$4 million to
14 I think they were hoping for like six or seven million.
15 And, of course, the big firms immediately came down on
16 the opposing side to that because it would have meant
17 that there would have been more projects set aside for
18 small businesses; therefore, fewer projects for which
19 they could compete.

20 And I agree with Mary Alice Garza talking
21 earlier this morning, that we need to preserve these
22 opportunities and make it possible for the 50-person firm
23 to compete or the 200-person firm to compete because
24 there are a lot of 10 and 15 and 20,000-person firms out
25 there today. And we're seeing larger firms swallow up

1 smaller firms, and then merge with firms of equal size to
2 form companies that are, you know -- I mean, recently, I
3 interviewed with a firm that has 35,000 employees.

4 So I mean, these monster firms are out
5 there, and I think we need to make sure that while they
6 have the resources to take work away from anyone and
7 everyone, that we protect the ability of the small firm
8 to get work. And indeed 90 percent of my clients right
9 now are small 8(a) minority, disadvantaged, woman-owned,
10 HUB firms who need help going up against these big boys.

11 I just think the dollar figures need to be
12 more relevant because in the design firms, for example,
13 we talk about a goal of billing 100 to \$120,000 per
14 employee. Well, if you have 40 employees, that's \$5
15 million there, you know, and that's not a big firm. So I
16 think that the dollars numbers need to be relevant to
17 what goes on in the industries as well.

18 I do want to come out as being very much
19 against any kind of grandfathering. I think that when
20 we -- when we hear these stories about firms that
21 misrepresent themselves and get away with it, that the
22 whole concept of grandfathering and giving you a window
23 during which it would be okay to do this is really just a
24 way to legitimize some bad behavior that's already become
25 almost institutionalized. And I think we need to protect

1 against that, and that the SBA is the logical place for
2 that protection to happen.

3 And, really, that's all I have to say this
4 morning. Thank you.

5 MR. BENDERSON: Well, thank you. And I
6 take it you don't have any prepared remarks.

7 MR. SIBEN: I didn't prepare.

8 MR. BENDERSON: Okay. So the court
9 reporter should note that Mr. Siben did not have prepared
10 remarks. I didn't mean that in a punitive sense, just a
11 note so that she doesn't think she's lost something.
12 Thank you very much.

13 Is Sherman Livingston here?

14 MR. LIVINGSTON: Yes, sir.

15 MR. BENDERSON: You're the CEO of NOW?

16 MR. LIVINGSTON: Yes, sir.

17 Good afternoon. Thank you, Chairman and
18 the Board for inviting us to speak at this hearing. A
19 year ago, I received a letter wanting my input of what do
20 you think about the proposal, and I responded. And I
21 received a letter saying that over 6,000 people
22 responded. And I feel honored to have the opportunity to
23 testify, and to testify, to my understanding, is to be a
24 witness to.

25 Good afternoon. NOW Machining has three

1 employees, two contractors employees, offices out of the
2 south sector of Dallas for over seven years. I'd first
3 like to thank the SBA for the opportunity to share my
4 views and concerns on this very critical issue. It has
5 been my experience over the past few years that we're
6 currently classified as a small business and large
7 business structure.

8 I'd like to have a comment on that. To be
9 a witness to, our company is working in the defense area
10 as a small manufacturing business, and we are competing
11 against large companies. And I have some copies of the
12 contract that we have been beat out because of large
13 contractors. They are more sufficient to get a bundle of
14 material. Just by buying the material alone for our
15 company put us out of the contract on many occasions. So
16 it is a concern of mine, even though I'm small business
17 minority and in the 8(a) contract.

18 My proposal is to structure the SBA in
19 such a way. For example, we use the word children.
20 Children classified as toddlers, teenagers, and young
21 adults, but we use the word children. All that falls
22 under the classification of a child. Just like the SBA,
23 in here we have numerous of different business, but all
24 of us is considered as a small business. All of us are
25 considered as a small business.

1 My proposal is that we set tiers, and in
2 those tiers you have a certain limit of years to be a
3 start-up, an incubator, mid-development, and advanced. I
4 propose that would be like seven years, and each time you
5 graduate, not based on the number of employees you have,
6 not really based on the amount of -- I mean, the number
7 of the contracts.

8 Because you can start -- as a start-up,
9 they can range from zero to \$250,000, but you can get as
10 many as you want. Mid-size, after that seven years, 200
11 to 750,000, and you can get as many as you want. The
12 problem, I think, is not so much on that side of the
13 table, but on this side of the table. The ones that make
14 the procurement, they have that ability to make those
15 adjustments, to bundle all contracts and just throw it
16 out there.

17 And nine times out of 10, a small business
18 cannot compete for that without hooking up with a large
19 firm. And that within itself tells you that the large
20 firm is bagging that -- I mean, is going to really get
21 the bulk of that contract. I'm a hard-working man. I
22 come from the country, and I believe in doing what I
23 asked to do. I understand SBA have rules and
24 regulations, but they ought to consider that a small
25 business is out there -- is the backbone of America. The

1 small business is.

2 The small business is the backbone of
3 America, and we got hard-working business owners, I
4 believe right out here, to witness that, because they've
5 come to testify. And I want to thank the SBA. I want to
6 thank all my colleagues, because this is a concern, and
7 we should take note of it.

8 Any questions?

9 MR. BENDERSON: Thank you very much.

10 MR. LIVINGSTON: All right.

11 MR. BENDERSON: We're through with the
12 listing for the morning, but I thought maybe since we're
13 going to adjourn at 12:30 in 20 minutes, we might have
14 time for a few more in the afternoon if any of you are
15 here.

16 The first of the afternoon, Rhonda
17 Williams, Express Personnel. We'll call these again so
18 that we're not cheating people.

19 Rocky Gill.

20 Darius Berry.

21 Fernando Andrade.

22 MR. ANDRADE: I'm here.

23 MR. BENDERSON: Are you ready to talk now?
24 We don't want to surprise you or anything.

25 MR. ANDRADE: No. Thank you very much.

1 MR. BENDERSON: Thank you.

2 MR. ANDRADE: My name is Fernando Andrade.
3 I'm president of GSR-Andrade Architects. We are a
4 28-person firm, and we're a small business. I'm not
5 going to go through all my comments here. I'll just pass
6 it. I'll be very brief. A lot of what has been said, I
7 echo.

8 Let me just say that I -- I do oppose any
9 rules as it relates -- any future rules as it relates to
10 grandfathering, business size, capital ventures, so forth
11 and so on. Best example, I can tell you in terms of
12 size. We're 28-person firm. If you go to the new size,
13 there would not be big business architectural firms in
14 the state of Texas because they're ranging from 400 to
15 500.

16 Somebody made a comment about an army,
17 said a comment about a platoon and divisions. I go out
18 to compete, and I feel like a platoon surrounded by a
19 division. If you go with the size of 500, I mean,
20 there's -- there's no longer any small business in
21 architect profession.

22 So I don't know really what the option is,
23 what the right solution is. Probably, you need to really
24 look at the industries, because certain industries stay a
25 certain size. A 28-30 people would probably be on the

1 small to mid size, but still the type of programs and the
2 type of projects that we go after, we're competing
3 against the biggest guys in the industry, multinationals.

4 So my position is that -- really look at
5 what is going to help the small business. I mean, we
6 create a lot of work, we create a lot of jobs, and really
7 analyze before blanketing the whole country with sizes.
8 Five hundred people for -- 500 personnel for an
9 architectural profession is multinational, basically.

10 That's my comment. I submit all my
11 different comments for the record, and I appreciate your
12 time.

13 MR. BENDERSON: Any questions? Well,
14 thank you very much.

15 Demetria Wise.

16 Terri Quinlan -- or Quinton. I'm sorry.

17 Did I say Terri Quinton?

18 Greg LeBahn, TIG Technologies.

19 Margo Posey.

20 Sandra Lugo-Camacho, Mobile Massage.

21 Ray Marsh, RAM Contracting.

22 Martin Burrell, The Burrell Group.

23 Detrick DeBurr, Digital Rhythm.

24 Mike Trevino, Jr., Trevino Mechanical

25 Contractors.

1 Rather than going through this whole
2 thing, is there anybody that wants to speak right now?

3 MR. WILLIAMS: I'd love to.

4 MR. BENDERSON: All right. First you and
5 then him. Are you on the afternoon schedule?

6 MR. WILLIAMS: Yes. I am Brent Williams.

7 MR. BENDERSON: That way you don't have to
8 wait around until the afternoon.

9 MR. WILLIAMS: I appreciate that very
10 much.

11 Okay. First off, my name is Brent
12 Williams. I'm with Williams-Pyro. We're a small
13 woman-owned business in Fort Worth. The business was
14 founded in 1963, and for the past 40 years we've been a
15 DOD subcontractor. The last five years, we participated
16 in the SBIR process and have done fairly well.

17 I know what it's like to compete in the
18 federal contract arena. And I strongly oppose the
19 proposal to make venture capitalist-owned businesses
20 eligible to participate in the SBIR process.

21 As it's been said before, small businesses
22 are the lifeblood of the U.S. economy; 99.7 percent of
23 employers nationwide are small businesses. Seventy-five
24 percent of this nation's new net jobs come from small
25 businesses, yet, small businesses win a very small

1 percentage of government contracts. The SBIR process and
2 program was established in 1982 to set aside government
3 funding specifically for businesses like mine and my
4 family's.

5 More than \$10 billion in the past 23 years
6 have gone to help mom-and-pops, the people that are
7 innovators, they're in their garage doing such work, and
8 also people in small businesses that have great ideas and
9 want to make those ideas into products. However, this is
10 a really large amount for these businesses, but it's
11 really only 2.5 percent. And let me reiterate, 2.5
12 percent of the federal R&D budget. That's a very small
13 piece of the pie.

14 Venture capitalist-owned businesses are
15 not rightfully eligible for this 2.5 percent of the
16 funding. However, there's 97.5 percent of the funding
17 they are eligible for. Let them compete for that.
18 They're not small businesses, not like my small business.
19 They may have a few employees, but they have unlimited
20 resources.

21 It's like, you know, inviting a peewee
22 league football team to compete against the Dallas
23 Cowboys. Yeah, there's 11 players on both sides of the
24 field, but what's the contest? It's -- you know, it's
25 totally skewed.

1 You know, and with the new trends of --
2 with SBIR funding towards larger Phase II contracts, yes,
3 I can see why a venture capitalist firm would want to get
4 involved in this. It makes perfect sense. But it's just
5 not fair.

6 You know, for every \$5 million Phase II
7 awards that might happen in some of the new contracts,
8 there's actually five or six small businesses that are
9 going to miss out on the \$750,000 Phase II award.

10 But, you know, the point keeps being made
11 over and over, this is not a new proposal, it's nothing
12 new. Over the past, I believe, 10 years I've heard this
13 issue being brought up, and it keeps coming up. And
14 there's a reason why. It's because the venture
15 capitalists, they represent -- or they are represented in
16 Washington. They have the dollars to make this count.
17 They can -- they have the, you know, dollars to be heard
18 out there.

19 The small businesses I'm familiar with, we
20 don't have the same voice in Washington. We can't afford
21 lobbyists, attorneys, 900 attorneys as I've heard here
22 today that can come out and basically take these matters
23 up again and again and again. You know, there needs --
24 enough is enough. You know, there's only two and a half
25 percent of the small business federal dollars that are

1 set aside. That's not going to make a \$40 million
2 difference to a biotech company.

3 The SBA's job is to strengthen the economy
4 by promoting the interest of small business. You know,
5 SBA has enough trouble keeping that money directed to
6 small businesses as it is.

7 You know, I think -- what was it -- the
8 Office of Advocacy of the SBA recently reported in 2002
9 that \$2 billion in federal contracts that were supposed
10 to go to small businesses did not. They actually went to
11 very large businesses. Forty-four of the thousand
12 small-business contractors in 2002 should not have been
13 awarded these contracts.

14 You know, small businesses have enough
15 challenges in their day-to-day work without having to
16 compete with businesses that greatly outweigh them in
17 resources, and that counts investment dollars. So I
18 would like to encourage you to help support small
19 businesses and keep venture capitalists out of the SBIR
20 process.

21 And I know that from the testimonies that
22 I've heard today, there are several companies that
23 support this, and I've heard from several others that
24 have the same feeling.

25 Thank you for your time.

1 MR. BENDERSON: Any questions?

2 MR. WILLIAMS: Yes.

3 MR. JORDAN: I'd just like to make a
4 comment to those who might not be acquainted with that
5 particular issue. It did not come about as a result of a
6 proposed rule of last summer. Actually, the SBIR Program
7 is set up for, you know, basic research.

8 And as a result of the enforcement of
9 current regulations, the number of -- I believe there
10 were two cases at least -- that SBA declared that some
11 companies that were owned by VCs, venture capital
12 companies, were not eligible for the SBIR Program because
13 the SBIR Program regulation states -- or stated until
14 December that it must be owned and operated by 51 percent
15 or more individuals, et cetera, et cetera, who are
16 citizens of the U.S., whereas, a venture capital company
17 is not an individual. It might be a legal person, but
18 not an individual.

19 Through the enforcement of existing
20 regulations, that's why venture capital companies are
21 interested in having the exemption for affiliation
22 proposed -- at least proposed. And there were many
23 comments to the proposed rule at that time that the SBA
24 issued separately and distinct from the one we talked
25 about last year. In fact, it was almost a year before.

1 It was in June of '03.

2 SBA proposed to allow SBIR participants to
3 be owned by companies, another entity, whereas, like then
4 the law said -- the regulations said they had to be owned
5 by individuals, but a single entity, only one entity.
6 Because the problem was, the companies that were
7 eligible -- perhaps your company is one of them, I have
8 no idea -- a company that is now participating in the
9 SBIR Program would have a subsidiary that was not
10 eligible and still met the size standard, which didn't
11 make any sense. I mean, I have a company, but my
12 subsidiary is not eligible. So we tried to correct that.

13 The proposed rule came on the heels of
14 those decisions by the SBA's Office of Hearings and
15 Appeals that determined that venture capital companies
16 were not individuals and, therefore, that's where that
17 came about. SBA did not indicate at all in the final
18 rule that it issued in December of '04 that an SBIR
19 company can be owned and controlled more than 51 percent
20 by another single company that SBIRs -- or that venture
21 capital companies were individuals.

22 SBA acknowledged the fact that we had so
23 many comments on that issue, and that it would later
24 consider that, and we put that into the Advanced Notice
25 of Proposed Rulemaking as an 11th issue, but it didn't

1 come from the proposed rule on changing size standards.
2 It was a program-related issue, and SBA is not proposing
3 it now. We're asking for comments. But that's where
4 that came about. It's a program eligibility question.

5 UNIDENTIFIED SPEAKER: Did the rule change
6 in December? I was a little unclear.

7 MR. JORDAN: In December of 2004, SBA
8 issued a final rule on the SBIR programs, Small Business
9 Innovation Research Program, stating that a company that
10 wants to participate in the program may be owned 51
11 percent or more by another single company, provided that
12 company is owned 51 percent or more by individuals. So
13 we're allowing one level up, but it's got to be a single
14 company, and that company must be eligible. So it's an
15 either/or situation.

16 UNIDENTIFIED SPEAKER: So does that mean
17 venture capitalists can own it or not?

18 MR. JORDAN: Yes. Technically, a venture
19 capital company can, but it's considered affiliated, just
20 like the parent company would be. There is the
21 affiliation question. The venture capital companies will
22 control and own other companies. So the SBIR participant
23 is automatically considered affiliated with all other
24 companies that the SBIR participant, the SBIR parent, or
25 the VC owns and controls.

1 So it greatly expands the size. It does
2 away with the 500-employee size standards 99 percent of
3 the times because of the size of the VCs. The SBIR
4 Program is based only on number of employees. Annual
5 receipts are not a factor. NAICS codes are not a factor.
6 It's strictly 500 employees, including affiliates.

7 The SBIR participant is considered
8 affiliated with the parent company. The parent company,
9 with a controlling interest in the SBIR company, is also
10 affiliated with any other company that that parent owns
11 or controls. And because they usually control other
12 companies, they can quickly go over the 500-employee size
13 standards.

14 UNIDENTIFIED SPEAKER: Okay. Just a point
15 of clarification. So if a venture capital company owns a
16 minority stake in a company, you don't include it in a
17 role, but if it owns a majority stake in a company --

18 MR. JORDAN: A single venture capital
19 company is the only corporate investor in that company
20 that has less than 51 percent, 49 percent or less. Yes,
21 you're correct, it is not considered affiliated; however,
22 the norm is, my understanding -- I'm not in the
23 industry -- but I believe that Mr. Williams had said
24 something about it's usually two or three companies.

25 There will be a syndicate of two or three

1 venture capital companies. Together they will have or
2 can have more than 51 percent. So the SBIR participant
3 is not owned by individuals, 51 percent or more, and it
4 is not owned by a single entity. So that participant,
5 because of the affiliation with the SBIR, is no longer
6 eligible for the program.

7 UNIDENTIFIED SPEAKER: Do all of the
8 participants have to be U.S. citizens still?

9 MR. JORDAN: The -- either the SBIR
10 participant must be owned 51 percent or more by
11 individuals or U.S. citizens, resident aliens, et
12 cetera -- I don't know the whole regulation. I could
13 read it to you -- or owned and controlled by a single
14 company that is 51 percent or more owned by individuals
15 who are citizens of the U.S., resident aliens, et cetera.

16 UNIDENTIFIED SPEAKER: So just as an
17 example, if we were calling something a VC, but now we're
18 also interchanging the term, "company." If we have --
19 since California is a popular place for VCs as is Austin,
20 Texas, if we have a VC that owns part of a company --
21 what's the difference between a VC owning part of this
22 company and say that Exxon, Mobil, or Wal-Mart, or
23 whatever --

24 MR. JORDAN: Technically, none.

25 UNIDENTIFIED SPEAKER: -- has the capital

1 on?

2 MR. JORDAN: Technically, none. The thing
3 is, you've got the affiliation that you have to consider.
4 And the comment from those who favor allowing venture
5 capital companies to participate -- it centered around
6 venture capital -- is to allow them to be excluded, make
7 an exception that they would not be considered affiliates
8 of the participating company.

9 MR. WILLIAMS: Adding one thing to that.
10 Adding one thing to that. If you look at the majority of
11 Fortune 500 companies, you'll also find that each one of
12 those Fortune 500 companies happens to have a venture
13 capitalist wing that sits right out there. It may be two
14 or three people, but it ties them back in to this large
15 network of, as I said, attorneys and this big lobbying
16 arm. And how do you compete against that? I mean -- and
17 where's the separation between the small business and the
18 large company? And there's really -- there can't be one.

19 MR. JORDAN: I'm not trying to take sides
20 on this. I'm really just trying to explain to you the
21 rules. Because most of you are government contracting,
22 and this issue was in the advance notice, because it came
23 out of the result of another -- a separate rule.

24 MR. BENDERSON: You had a question.

25 MR. BATEMAN: If I heard you right,

1 enforcement, was that what you were proposing?

2 MR. WILLIAMS: Not necessarily.

3 Enforcement would be nice, but making sure that the rules
4 are fair and that changes are not made that are going to
5 make this -- the existing SBIR process unfair. And by
6 allowing venture capital to permeate this, the existing
7 structure would be unfair to the existing businesses due
8 to the ownership of that small -- or where the venture
9 capital actually comes from.

10 MR. BATEMAN: So we are sort of caught
11 between we need the venture capitalists, but we've got to
12 regulate them better?

13 MR. WILLIAMS: There's a time for that,
14 but the time is not at the beginning of the process.
15 It's not at the beginning of an idea. It's -- as the
16 venture capitalists like going to the bank, so to speak,
17 should be a way to help push things forward towards --
18 you know, a product forward towards, you know, a -- I
19 guess, a market entity.

20 But at the same point, an idea on the
21 other end is not a product, or not as the SBIR defines
22 it. An idea or innovation is an idea that is put forth
23 to do development. It's innovation. It's not product
24 development or product, more so, marketing, if that makes
25 sense.

1 MR. JORDAN: One more clarification for
2 those of you in the room. This exemption from
3 affiliation for venture capital companies consideration
4 has nothing to do with government contracting. It has
5 nothing to do with SBA lending. It's limited to the SBIR
6 Program. Only to participate in the SBIR Program would
7 be of interest to you because the proposal, although it's
8 not a proposal, the concept would not have any effect
9 whatsoever on government contracting or on government
10 lending or on any other SBA programs. Just the SBIR
11 Program.

12 MR. BENDERSON: Thank you very much.

13 MR. WILLIAMS: Thank you.

14 MR. BENDERSON: Margo Posey, Dallas/Fort
15 Worth Minority Business Council.

16 MS. POSEY: Good morning. I believe I was
17 scheduled for this afternoon, but I'm happy to be here
18 this morning with you, and I'm pleased that you chose
19 Dallas as a site for these very important hearings.

20 I'm Margo Posey, President of the
21 Dallas/Fort Worth Minority Business Council. We are a
22 nonprofit organization representing over 187
23 corporations, public sector entities, and institutions
24 that are buying entities, and over 675-plus certified
25 minority-owned businesses.

1 On the advance notice and proposed rule on
2 size standards, the Dallas/Fort Worth Minority Business
3 Council opposes the proposed rules, as we do not believe
4 it benefits small, minority, women-owned businesses.

5 We, also, are standing behind the
6 resolution that has been put forth by our national
7 organization, the National Minority Supplier Development
8 Council. I believe that it was pro-offered at the
9 hearings in DC last Friday, along with MBELDEF.

10 For over 30 years, organizations and
11 advocates like the National Minority Supplier Development
12 Council, like the Minority Business Enterprise Legal
13 Defense and Education Fund, like the U.S. HCC, and others
14 have advocated on behalf of minority businesses and
15 attempted to work with the SBA and the government to
16 structure plans that are in the best interest and benefit
17 small business.

18 These are complex issues without singular
19 answers. All businesses are about the business of trying
20 to benefit their own business, large or small. Clearly,
21 if you look at the report that was released December
22 28th, 2004 where you have 44 companies listed in the
23 Federal Procurement Data Center on data based as small,
24 and were found to be other than small, those 44
25 businesses were looking for advantages for their

1 business. We're concerned about the advantages for small
2 businesses.

3 It is imperative that the Small Business
4 Administration remain true to its name, and by the law
5 that it was created by, to ensure that small businesses
6 are receiving a fair share of federal contracts.

7 I think that we get there by working
8 closely together with advocates for minority business,
9 for small business, and have them at the table. It's
10 real unclear who proposed the current rule changes and
11 who it really benefits, but, again, we do not believe
12 that it's in the best interest as they are written
13 currently for small and minority-owned businesses.

14 Thank you.

15 MR. BENDERSON: Thank you. I think we'll
16 take next the gentleman in the back.

17 MS. POSEY: Excuse me.

18 MR. BENDERSON: I'm sorry.

19 MS. POSEY: That's okay. We have several
20 members that I know were called this morning that were
21 not able to be here, but they are submitting written
22 testimony, and we will also provide written testimony as
23 well. We will forward it to Mr. Alexander.

24 MR. BENDERSON: That will be great.

25 MS. POSEY: Thank you.

MR. BENDERSON: Thank you very much.

MR. EVANS: Gary Evans with Photodigm.

MR. BENDERSON: Gary Evans with --

MR. EVANS: Photodigm.

MR. BENDERSON: -- Photodigm.

MR. EVANS: Yeah. Somewhere in the afternoon.

MR. BENDERSON: No. 19.

MR. EVANS: Gary Evans. I'm with -- I'm the chief technical officer of Photodigm in Richardson, Texas. Photodigm's a compound semiconductor company in the photonics components business. That's an area that overlaps -- has some overlap with nanotechnology and biotechnology.

We were incorporated in 2000, and we've taken in some venture capital money. A minority -- it plays a minority role. We currently have 10 employees. We've received about, since 2002, \$3 million approximately in SBIRs.

Let's see. From those SBIRs and other income that we've had -- in fact, I should mention we really have spun out some technology developed at Southern Methodist University, and we let subcontracts to SMU in the order of about \$.5 million, and another 150K or so to the University of Texas in Dallas.

1 So being small has quite an incentive for
2 us to collaborate with universities, and we've also had
3 collaborations with other small businesses in our SBIR
4 programs.

5 It's possible that we would win more SBIRs
6 if the size was reduced from 500 to 100 employees, but
7 just from a -- if we stand back, we don't really have a
8 problem with 500 being the employee limit.

9 We suspect that as companies get larger,
10 SBIRs play a lesser role in the corporate finance, and
11 companies are not -- are less interested in SBIRs because
12 it's more of a distraction towards their goals as they
13 grow.

14 Unless an SBIR topic is exactly aligned as
15 you -- as companies get larger with projects they're
16 already working on, they're less likely to respond to
17 that topic. If they do respond to it, and they're a
18 large company, because it's closely aligned, then they're
19 likely to be a very good candidate to receive the award.
20 And that's in the best interest of the SBIR Program to
21 have success, and it's in the best interest of the
22 country.

23 Similarly, I think a company that's -- has
24 venture capital money, and even if it becomes a
25 controlling amount of venture capital money, that money

1 is more likely to be -- I would look at it as more like
2 matching money if the venture capitalists that are
3 controlling the company allow them to go after SBIRs.

4 The most -- it's -- I think it's about as
5 difficult -- in fact, it's probably much harder to get
6 venture capital money than it is SBIR money. And when
7 they do invest, they want the company to be extremely
8 focused on goals that are going to return them perhaps a
9 factor of 10 over their investment.

10 So -- so I think -- well, I guess I would
11 say that as a company that's survived the tech bubble,
12 that, you know, any source of funding that helps keep the
13 doors open would be welcome.

14 Well, -- so to summarize, our company
15 really doesn't see an advantage to the SBIR Program or to
16 the country to reducing the size limit, and I think the
17 relatively small Phase I awards of 60 to 100K is
18 self-limiting.

19 And I've spoken to Fortune 500 companies
20 that even feel that many of the federal broad-area
21 announcements are not worth their time, even though
22 they're a few million dollars. They prefer a secondary
23 role with a university or a small company. And then if
24 that area starts to become very large, then they would be
25 -- they're interested in stepping in.

1 And I think the venture capital, to some
2 effect, is similarly self-limiting. And I think there's
3 a good chance that it would be good for the SBIR Program
4 and the country without too much impact on existing small
5 businesses.

6 And I should say that I'm fairly naive.
7 I've only been with this company -- well, since we
8 founded it, and I realize there's a lot of companies that
9 are diverse in a lot of other areas. So my comments
10 really apply to kind of the Telecom platonic device area.

11 MR. BENDERSON: In plain English, I'm not
12 sure I understood what your company does. I don't have a
13 technical background.

14 MR. EVANS: Oh, okay. Well, the -- we
15 make semiconductor lasers. Originally, they were --
16 they're the source of the light that goes down optical
17 fibers for Telecom.

18 MR. BENDERSON: Right.

19 MR. EVANS: We've moved more into
20 high-power semiconductor laser that have more DOD
21 applications.

22 MR. BENDERSON: That's helpful. Is there
23 anybody else that wants to go next? Thank you very much.

24 MR. RAVAL: Thank you. Can you hear me?

25 MR. BENDERSON: I can.

1 MR. RAVAL: Yeah, you can. Okay. Well, I
2 can speak loud. My name is Amar Raval. I'm the
3 president of TerranearPMC. We're an environmental
4 remediation and engineering design services company. We
5 got certified as an SBA 8(a) company last year.

6 And more than giving specific information
7 on our company, my intent is to make a statement based on
8 the Small Environmental Business Action Coalition. We're
9 a member. We're also a member of the Department of
10 Energy Small Business Advisory Committee, and also a
11 member of the New Mexico 8(a) Association, where Mr. -- I
12 don't recall his name.

13 THE REPORTER: I'm sorry. I can't
14 understand what you're saying.

15 MR. RAVAL: Okay. Sorry. So SEBAC --
16 SEBAC is a Small Environmental Business Action Coalition.
17 Most of the members of SEBAC operate under the 562910
18 Environmental Remediation Services NAICS code. This is a
19 relatively new size standard. I think it was created in
20 1994 in response to the growing number of clean-up
21 projects -- the federal clean-up projects, both with the
22 DOD and DOE.

23 The remediation industry is a composite of
24 services: Waste management, testing, life sciences,
25 development, construction, and engineering. As

1 Ms. Garza, I believe, said before, few firms make up this
2 industry due to the high capital cost and labor
3 requirements, which can exceed over a billion dollars
4 over several years, and also involve extensive bundling.
5 A handful of firms with dollar revenues of a billion
6 dollars or more dominate this industry.

7 Currently, the size standard for this
8 industry is 500 people, and that may seem large, but it
9 illustrates a need for careful consideration when SBA
10 makes their decisions. If the standard were reduced to
11 less than 100 people, as has been proposed, firms would
12 be too small, while firms between 100 to 500 would be
13 categorized alongside large firms, and this defeats the
14 purpose of the Small Business Act.

15 We believe that SBA should balance the
16 present standard because they base it on the analysis
17 that it's made before by looking at the distribution of
18 firms by size, the high start-up costs, average firm
19 size, and competitive trends.

20 Our recommendation is that SBA should
21 assemble a panel of experts comprised of microeconomic
22 analysts, information systems specialists, and
23 procurement professionals both from industry and
24 government and apply IT-based solutions that could
25 evaluate size standard policy.

1 And regardless of the resolution of the
2 selected SBA size standard issues, we urge SBA to
3 consider ways to ease transition for the companies in our
4 market and other markets, and avoid retroactive effects.

5 MR. BENDERSON: Thank you. Any questions?

6 Is there anybody else that wants to --
7 yes, the lady in the back.

8 MS. McKEETHEN: Hello, and thank you for
9 entertaining us today and being here with us. I am Nita
10 McKeethen, and I own NPM Enterprises, and that is for
11 trainers. We are a group of brilliant trainers, small
12 group of trainers. We do professional and work force
13 development seminars. We also do personal development
14 and continuing education seminars locally and throughout
15 the United States.

16 And when I think about being in the same
17 category -- I work out of my home as many people do
18 now -- and I think about being in the same category as
19 AT&T Wireless; Nike; Barnes & Noble; Verizon; Dole Food
20 Company; Office Max; Office Depot; Sheraton Hotels;
21 Raytheon; and Perot Systems.

22 Those are all considered small businesses
23 just like I am. And I think about myself and a few other
24 wonderful people working out of my living room, and I
25 think about Perot Systems, and it just does not seem

1 to -- to come together in my mind.

2 So I think there do need to be size
3 standards, because the small businesses cannot compete
4 with the large businesses on the same scale. I've heard
5 the numbers 500, and I've heard the number 100, and I'm
6 wondering if there can be some middle ground, because I
7 don't want to exclude some of the wonderful companies
8 that have spoken today saying that they would be knocked
9 out. They truly are small businesses because of the type
10 of business they provide, such as some of the
11 environmental businesses.

12 Wouldn't want them to be knocked out if
13 you come down to 100. So I was wondering if there is
14 some middle ground that we could consider, such as 200 or
15 250, that would include businesses that are truly small
16 businesses. That is my question to you.

17 I am for the size standards, but I'm also
18 for not knocking truly small businesses out. So I look
19 at 100, and I think that's probably not large enough, and
20 I look at 500, and I realize that all of these companies
21 that I mention fall into that category. And I wonder if
22 there can be something in the middle that would include
23 other businesses that would change those size standards.

24 MR. BENDERSON: And that would be your
25 proposal?

MS. McKEETHEN: That would be my proposal.

MR. BENDERSON: Do you have a specific --
I know you've mentioned 250 --

MS. McKEETHEN: I mentioned 200 and 250
simply because it kind of comes right in the middle, but
I have not researched that. It just seems like a better
idea than going with 500 or 100.

MR. BENDERSON: Okay. Well, thank you.

MS. McKEETHAN: Thank you.

MR. BENDERSON: Is there anybody else who
wants to speak? We'll get the lady in the back after the
gentleman with the blue blazer. Are you ready?

MR. MCGREGOR: I was registered under the
name of Jack Welch from Ocean Ship Holdings, and --

MR. BENDERSON: Are you here under an
alias?

MR. MCGREGOR: Pardon me?

MR. BENDERSON: Are you here under an
alias?

MR. MCGREGOR: Yeah, I'm here under an
alias. But he had to go to a funeral today, and so I
flew up from Houston, and my name is Jim McGregor. And
I'm the president and chief operating officer of a
company called Ocean Ship Holdings out of Houston. We
are a small business, and we operate under an ocean

1 freight NAICS code which has a 500-employee size
2 standard, which we believe is acceptable for our type of
3 business. I'm going to explain that here in just a
4 minute.

5 And -- well, first of all, I wanted to
6 thank you gentlemen for coming here and taking the time
7 to give us an opportunity to be heard. I've spent time
8 with the folks in the government contracting office of
9 the SBA in your -- in your Washington headquarters. I've
10 spent time talking to our Texas senator, Cornyn, who is
11 on the Small Business & Entrepreneurship Committee in
12 the -- in the Senate, and he is very supportive of the
13 efforts of the Small Business Administration to -- to
14 award small business contracts to legitimate small
15 businesses.

16 And we know how difficult it is for the
17 SBA and OIG to ferret out the companies that are small
18 from those that certify that they're small and may, for a
19 variety of reasons, not be small.

20 Now, at this time, our company is -- we
21 filed a request for -- a protest under a government
22 contract for size determination against a company that we
23 knew to not be a small business, and the SBA, in a very
24 recent size determination, found in our favor, and we're
25 very pleased with that. The other company is appealing

1 it right now, and because of that, our lawyers advised me
2 not to go into any detail regarding that appeal.

3 Quickly, what our company does is, we
4 operate ships. We operate ships for ship owners, and we
5 hire the crew, we do all the maintenance engineering, we
6 prepare dry docking specifications, and then we conduct
7 the business of the ship around the world anywhere in the
8 world that it happens to be. And we do that for a fee.

9 One of our main customers that -- where we
10 can grow our business is the federal government, is the
11 United States Navy. And we presently, right this minute,
12 are operating five oil tankers for the U.S. Navy. And we
13 are -- we received that award almost 20 years ago as a
14 small business.

15 We've received other awards as a small
16 business, but we didn't until recently understand the
17 small business set-aside program. And we've really had
18 to learn a lot about how that program works.

19 And I thank the folks in the SBA for the
20 work they've done to try to help legitimate small
21 business, because I do believe that you are doing a good
22 job. Without you, the war that we're fighting in our
23 business against very, very large companies that are just
24 blowing away our cost structure, we couldn't stand up to
25 them for a second.

1 And what I wanted to explain is, we're
2 competing in our industry against companies. You see --
3 you see containers out on the road from companies like
4 Maersk Sealand. Very good companies, huge companies.
5 They come into our country, and they -- and they operate
6 their ships, and they provide the same service that we
7 provide as an auxiliary service to what they already do.

8 And they pretty much give it away, as
9 you've seen with a lot of businesses. And some of you
10 I've heard earlier talk about this. If they're doing
11 their purchasing and accounting overseas, and they've got
12 a small office in the United States and are already
13 running 100 and 200 ships, it's easy for them to bid on
14 contracts, especially if they have two guys in a company
15 in between us and the -- them and the government. And if
16 they structure that properly, and that could be found to
17 be a legitimate small business.

18 I'm not singling out that company. I'm
19 just explaining that a lot of these big companies have
20 come into the U.S., and they've driven down the cost
21 structure. And for me to bid on a contract where I have
22 to hire accountants and purchasing folks and go up
23 against a large corporation that has, you know, some kind
24 of a front company.

25 And I hate to use that term, but you-all

1 know what I mean by that. And that large company has got
2 all of its -- all of its main administrative cost
3 functions outsourced outside the United States or to
4 other specialized companies. We cannot -- we cannot
5 compete with that.

6 So we're -- we're -- I'm not -- I'm going
7 to switch now to grandfathering. We do not support the
8 idea of grandfathering. We think that any ultimate
9 changes that you make should take effect. And we believe
10 that the 500-employee size standard is acceptable for our
11 business.

12 I wanted to explain to you, just give you
13 a perspective on what that means. We -- when we operate
14 a ship, we hire the crew. The crew on most of these
15 ships in round numbers, roughly 25 people, master,
16 captain of the ship, officers, and all the other crew, 25
17 people on a ship.

18 MR. BENDERSON: One minute, sir.

19 MR. MCGREGOR: Pardon me?

20 MR. BENDERSON: One minute.

21 MR. MCGREGOR: Twenty-five people on a
22 ship, and you have a replacement crew. So every ship is
23 50 employees on your payroll data. And so 500 employees
24 would give us about eight to 10 ships, including our
25 shore staff. And a 100-employee standard would only give

1 us about three or four ships, and not enable us to
2 compete. So we're in favor of staying with 500
3 employees, and that's really the extent of my comments.

4 MR. BENDERSON: All right. Well, thank
5 you very much.

6 MR. MCGREGOR: Thank you.

7 MR. BENDERSON: Any questions? Do you do
8 berthing contracts, too?

9 MR. MCGREGOR: Well, we've looked at them,
10 but we don't presently -- we don't have any berthing
11 contracts right now.

12 MR. BENDERSON: Thank you.

13 MR. MCGREGOR: Thank you.

14 MR. BENDERSON: Is anybody else registered
15 for the afternoon?

16 MS. RIGGS: Good afternoon, my name is
17 Nadine Riggs, and I'm kind of different here. I'm going
18 to speak from a -- I'm speaking as a future business
19 owner. And the reason why I say that, because I was here
20 to try to understand all this controversy as far as the
21 standard size for small business.

22 And it kind of scares me, because in the
23 next few months, I'm getting ready to take that step.
24 And it seems like that I will be competing against
25 companies as one individual that I do not have the

1 resources as someone stated earlier, the IBMs, the Office
2 Depot, the Office Max, or Perot Systems. It's just going
3 to be me out there and the SBA, because they are going to
4 be the ones that will be helping me to take this venture
5 down the road.

6 So if you change the standard size or
7 change anything else about the SBA that everybody here so
8 eloquently voiced about it, then those of us who want to
9 go into business in the future, then we don't have a
10 prayer. We -- it would stop the wheels of America
11 growing if you stop the small business in its tracks
12 right now.

13 Of course, we all have concerns, but we
14 also have to look at the future as well. And if we don't
15 look at the future, then where will we be? And that
16 scares me as being a potential business owner in the near
17 future.

18 So I know everybody here is voicing their
19 opinion, and I want you to take a look at the future,
20 because America is our future. And for so long, we have
21 neglected our future and put it on the backs of our kids.
22 But don't let -- SBA, don't let that happen to the small
23 business person who is out there striving and trying to
24 make a business, and trying to make a difference in
25 America. Don't let that happen to us. And, certainly,

1 don't let that happen to the ones that are coming up.

2 So if anything that I gather out of all of
3 this, that would be, if it's going to be any changes,
4 maybe the dollar. Maybe move it from six million to 10
5 million. That's what I propose.

6 MR. BENDERSON: What kind of business are
7 you in, or do you want to start?

8 MS. RIGGS: Printing. Thank you.

9 MR. BENDERSON: Thank you. Larry Hall,
10 QNet Information Services.

11 MR. HALL: Yes. Thank you.

12 I'm Larry Hall, President and CEO of QNet
13 Information Services. Thank you for allowing me the
14 opportunity to testify today.

15 We are an IT outsourcing firm. We provide
16 IT services, which means we hire a lot of people. It's
17 not uncommon for us to win a contract that we have to
18 bring on board 20, 30 people at one time.

19 We have today 72 employees, revenue is
20 somewhere around seven million, which classifies us as a
21 small business. We're classified -- we're certified as
22 an 8(a) HUB, NCTRCA. We have the GSA schedule for the
23 last two to three years.

24 We have not won a federal contract yet.
25 We still have hope that we will, and mainly because we

1 compete against the IBMs, the SAICs, EBS, ACS, Northrup
2 Grumlin, for some of the same opportunities.

3 With the challenges competing in this
4 technology space, I'm opposed to any changes that allow
5 large corporations to continue to win the opportunities
6 that small businesses should win.

7 I would recommend a cap on the revenue --
8 gross revenue to determine the size, and not the number
9 of employees. And I would support anything to reducing
10 the complexity for small businesses to compete.

11 Thank you.

12 MR. BENDERSON: Any questions?

13 MR. BATEMAN: Yes, I have one. You know,
14 on small business set-asides, only small businesses can
15 play. So you're saying you're playing with the big boys,
16 and you don't have an arena that you can play in the
17 small.

18 MR. HALL: No. We think we are playing
19 against our own size, but many times we're not winning
20 those. The only time we're able to win is to be a sub to
21 one of the big guys that I mentioned here. We have not
22 had a chance to win an 8(a) opportunity.

23 MR. JORDAN: Is that because the contracts
24 are just too large, that only the larger companies can
25 handle them, and then they sub part of it out?

1 MR. HALL: That's the way they're
2 structured.

3 MR. JORDAN: You're in the IT services?

4 MR. HALL: We are in the IT services.

5 MR. JORDAN: There's a \$21 million size
6 standard, so you meet the size standard.

7 MR. ALEXANDER: Point of clarification,
8 please. You say you haven't been able to win any 8(a)
9 competition, or you haven't been able to secure any
10 through the 8(a) arena?

11 MR. HALL: We haven't been able to win any
12 through the 8(a) competition or through the SBA
13 set-asides for small businesses in that area.

14 MR. BATEMAN: Well there shouldn't be any
15 large businesses bothering you in the 8(a) and the
16 set-asides, so is it a competition problem or -- I'm just
17 trying to figure out why you -- you know, if you're
18 playing with the small guys, what seems to be the
19 problem, I guess.

20 MR. HALL: Well, let me see if I can
21 explain it the way it -- you know, it comes out. There
22 are many of these from the -- and maybe more of it is
23 towards the GSA side, but there are several of these
24 special set-aside arms like GWAC and --

25 MR. BATEMAN: GSA schedule?

1 MR. HALL: Yeah. And GSA schedules are a
2 requirement to participate in that. And there are some
3 that are set aside as 8(a), and -- and there are some set
4 aside that are HUBZone. There's some set aside that's
5 all of those areas, which falls under the SBA umbrella to
6 some level. And we've participated in many of those, and
7 we have not been successful in winning those.

8 And then when you -- you go back and do
9 some of the research, you find out that it's a -- it's a
10 larger contract that someone else ended up getting, and
11 that 8(a) firm that looked like one is really a front
12 company that was backed by somebody else larger in many
13 instances.

14 MR. JORDAN: That would certainly be
15 correct, but one of the problems has been that companies
16 on a schedule would be purchased by a larger company, and
17 they can continue that company and still be treated as a
18 small business.

19 SBA did issue a final rule last summer,
20 but it took effect in December, requiring whenever there
21 is a novation of a contract because of a purchase or
22 change of name, that the contract -- they must recertify.
23 So they may keep the contract, but they won't keep it as
24 a small business.

25 MR. HALL: Okay.

1 MR. JORDAN: That's -- that's the
2 regulation now as of December, but that's -- that's new.
3 But under a -- if a contract is novated because a large
4 company bought that small company that had a small
5 business contract, it can no longer be considered a small
6 business.

7 MR. HALL: So that -- that started as of
8 December?

9 MR. JORDAN: That started December 21st,
10 thereabouts. I don't remember the exact date, but, yeah,
11 something like that.

12 MR. HALL: Okay. Well, that -- that would
13 explain --

14 MR. JORDAN: It would help some of the
15 problems. It doesn't solve it all, but it would help.

16 MR. BENDERSON: Is there anybody else
17 that's -- thank you very much. Is there anybody else
18 that's registered?

19 MS. SEDWICK: I'm registered.

20 MR. BENDERSON: Okay. What is your name,
21 please?

22 MS. SEDWICK: My name is Cynthia Sedwick.
23 My sister is registered for the morning, Catherine
24 Sedwick, but she's in Austin at a meeting, so...

25 MR. BENDERSON: Okay. Alliance

1 International Assistance?

2 MS. SEDWICK: Yes.

3 Good afternoon. My name is Cynthia
4 Sedwick. I'm with Alliance International Assistance. My
5 sister was scheduled to speak, but she's in Austin at a
6 meeting with the State trying to secure some business.
7 I'm the founder of Alliance International Assistance.
8 Our company has -- is about 13 years old. We're a small
9 business. I actually funded the business myself with
10 about \$150.

11 I was in the -- I was in the medical cost
12 containment working for a large corporation here in the
13 city, and I structured a division for the international.
14 And as a result of things in the marketplace and the way
15 I was treated, I decided that I would try to build my own
16 business.

17 So I -- being in the medical cost
18 containment and adjusting industry, I knew it was going
19 to be hard for me as a small business to start here in
20 the United States. So because of what I structured with
21 the company, I felt that I had a better chance overseas
22 because I was doing international business at that time.

23 So I started my business at night calling
24 New Zealand and Australia, and I put together my -- I put
25 together all my literature, letterheads, and brochures

1 through Kinkos. So I -- as of today, we have 12
2 employees. I have a medical director on staff, and we
3 have had zero financing because of the difficulties that
4 small businesses have in financing.

5 Now, in order for me to grow my company, I
6 had to always be innovative, and to deal with the
7 situations that I had at hand. And as a result, I was --
8 I targeted my business where there was a niche.

9 I'm not a PPO, I'm not a PPA, I'm a
10 medical cost containment specialist. I specialize in
11 saving money for insurance companies -- any insurance
12 companies, state government, federal. I have
13 specialists. I have doctors that are contracted on staff
14 that negotiate, and I also negotiated in the beginning
15 myself.

16 So as a result of large negotiations,
17 sometimes we receive 40, 50 percent discounts on medical
18 bills. In order for us to secure those savings, we
19 wanted to make sure that the payments would be made in a
20 timely manner, because they were time-sensitive
21 discounts. And as a result, I would have to make sure
22 the payments come to my office, and also pass through for
23 me to make sure that the payment has been made.

24 Because, internationally, at the time,
25 when they would do a draft it was not connected to the

1 federal reserve system, so they would have to send the
2 money for collections. Which then the hospital would be
3 penalized for the collection of the funds. So in order
4 for me to market my services better, I offered free
5 check-writing services, which would -- which increased my
6 business, and also increased the cash flow of my
7 business.

8 But in order for me to compensate for the
9 IRS, I had -- it appeared as income, but it actually was
10 a pass through. And as a result, it has increased my --
11 the level of my income to where I'm not considered a
12 small business. Now that I'm coming domestically, I'm
13 not considered a small business even though I have 15
14 employees.

15 And I'm definitely opposed to the -- I'm
16 definitely for anything increasing the employee size,
17 particularly because now that I'm coming domestically,
18 it's harder for me to get business domestically than it
19 was internationally. So I actually had secured more
20 contracts quicker internationally than I have
21 domestically.

22 And so as opposed to the -- there are some
23 companies that I have seen that we have gone against that
24 have, as you were saying, purchased smaller companies,
25 and the smaller company has been involved in the

1 contract. Now, they have the benefit of a small
2 businesses revenue. I do not have the benefit to apply,
3 and in some situations where I should, because I am truly
4 a small business, but as a matter of a technicality, I
5 cannot apply. And there are several contracts that are
6 coming forward that I would like to bid on that actually
7 I could actually meet the requirements of if it was
8 registered according to the numbers.

9 And in regards to grandfathering in larger
10 corporations, I believe that it's going to do small
11 businesses a disservice. I mean, we work very hard. I
12 had to work seven days a week and 12 hours a day to keep
13 my business going. And never once have my employees'
14 checks bounced. They have medical insurance 100-percent
15 covered.

16 I believe that small business is the
17 backbone of America. When we lay off, we don't wipe out
18 a whole system or a whole city or a whole state like
19 large corporations do. And I believe that we need -- we
20 need a little more assistance in reference to -- we don't
21 need more competition with the larger corporations.

22 We just want an opportunity to do
23 business. We're not asking for handouts. We're asking
24 for our opportunity. And I believe that's what we need,
25 an opportunity. But if large corporations are

1 grandfathered in, then we don't have the cash that other
2 large corporations have.

3 And the venture capitalists, I'm -- if
4 we -- if you approve 51 percent venture capitalist, then
5 we also are looking at loopholes that people can get
6 around. There's all kinds of loopholes. I've seen
7 companies that have gotten around through the loopholes,
8 and I know they are not large -- they're not small
9 businesses.

10 But, me, I'm doing it -- trying to do it
11 the right way, pay my taxes, and do what I need to do so
12 that I can grow my business. And that's what we're
13 asking -- I'm asking for, an opportunity for me to bid,
14 because I have the abilities now that I have a
15 reputation. I've worked for Lords of London, for large
16 syndicates. I have letters of recommendation from them.
17 I work for nothing but blue chip companies in the UK and
18 have saved them tens of millions of dollars in medical
19 cost containment.

20 But, when I come to the United States,
21 it's more difficult to do business here because of the
22 restrictions. And all I want to do is have an
23 opportunity to come in and secure some bids from the --
24 from government -- from federal and state, bids that are
25 available for companies that would -- that I would fall

1 into according to my size. And I have 15 employees, and
2 that's what I'm asking for, an opportunity for you to
3 look at the small business and know that we're just
4 wanting our opportunity to continue.

5 We work hard every day. We're not like
6 large corporations that have all of these perks for their
7 employees. I mean, the VPs can go different places.
8 Most of the people here, they're here working, and
9 they're working seven days a week sometimes. And if --
10 if something is lacking, or they can't afford another
11 employee, they have to take up the slack and do it
12 themselves.

13 MR. BENDERSON: Thank you.

14 MR. JORDAN: I just want to make a
15 comment. I believe that you weren't here earlier when I
16 made the comment. I hope this will alleviate some of
17 your fears. SBA has not proposed grandfathering. It
18 never has. It has no intention of doing so. The
19 question of grandfathering came up as a result of other
20 people, such as yourself, small businesses, asking SBA to
21 consider that last year in response to our proposed
22 rules.

23 SBA is merely gathering additional
24 information now and additional comments. I haven't heard
25 anybody support it this morning, but I want you to

1 understand, SBA has not proposed that. SBA has not --
2 also has not proposed -- I think you mentioned something
3 else -- the VC, venture capital companies. That would
4 have absolutely no effect upon any government program
5 except the Small Business Innovation Research Program.
6 And we haven't proposed that either.

7 So that would not affect government
8 contracting. It would not affect lending. Even if they
9 did do that, it would not affect you.

10 MS. SEDWICK: Okay. Thank you.

11 MR. BENDERSON: Thank you very much.

12 MR. BATEMAN: You mentioned that you, in
13 your bidding, sometimes you saw that you were up against
14 some other than small businesses. Did you ever protest?
15 That's -- that's your avenue.

16 MS. SEDWICK: Well, as I said, today I'm
17 here because my sister's in Austin. She's the one who
18 actually does all of those things --

19 MR. BATEMAN: All right.

20 MS. SEDWICK: -- and anything regarding
21 that. I basically go in and figure out how to make
22 everything work according to what we have, and then we go
23 in, and so that we can actually provide a stellar service
24 to our clients.

25 So we have to -- if we're going to go in

1 and bid, if someone is doing a 25-percent discount, I
2 want to try to be able to do at least a 45-percent
3 discount or a 40-percent discount.

4 So I have -- I had to become innovative.
5 So I put together networks of doctors that are retired,
6 or they're tired of practicing, and I negotiate with them
7 to help to negotiate with me. So as a result, I have a
8 heart surgeon, I have orthopedic specialists that are
9 working with us at -- on a commission basis as I
10 structured their payment in order for me to be able to be
11 viable in the marketplace. Because I can't -- I couldn't
12 afford to have them on staff.

13 So I have to compensate through my
14 commission -- figuring out something innovative like a
15 commission structure or something so lucrative that
16 they're willing to come and talk to me if they have
17 been -- let's say, for instance, a heart surgeon -- a
18 known heart surgeon, then I have -- I have just signed a
19 contract with a very well-known heart surgeon in the
20 northeast. He directed -- he was a director over a large
21 hospital system over the residency program. He was also
22 one of the main heart surgeons and liver transplant
23 specialists.

24 So these are things that I have to try to
25 do as a small business in order for me to compete with

1 the larger companies, also to be able to offer a stellar
2 service. And my market is out of network claims, so I'm
3 not competing with PPOs. I'm competing with those
4 companies that are actually now realizing that there is a
5 huge fallout of medical costs, medical bills that fall
6 outside the PPO networks. And that's where they're
7 starting to see that there's a large amount of money
8 available.

9 MR. BENDERSON: Thank you. Maybe we'll
10 stop now and resume at 1:30.

11 (Lunch break was taken from 12:24 p.m. to
12 1:43 p.m.)

13 MR. BENDERSON: We're ready to start the
14 afternoon session, and the first speaker is
15 Rhonda Williams from Express Personnel.

16 I just want to remind you, there is a
17 timer here. Everybody is limited to five minutes. You
18 can see it when you're speaking to the right. So you
19 don't have to have anybody yelling at you. You can just
20 keep track of it there.

21 MS. WILLIAMS: All right.

22 It's a pleasure to be here. The
23 opportunity to speak at this hearing is much appreciated.
24 Thank you very much. I have been with Express Personnel
25 Services as a franchisee since May of 1998 in Lufkin and

1 Nacogdoches, Texas. And I can safely say that it has
2 been and continues to be a dream come true for my
3 particular entrepreneurial spirit.

4 I am in the people business. I provide
5 people -- workers -- to client companies in the
6 Nacogdoches/Lufkin area of Texas. I have contracted with
7 my franchisor to supply me with back office support,
8 including payroll and billing services.

9 Viewing franchising and the staffing
10 industry as one entity is not accurate, as it would
11 appear that I may not appear to be a small business
12 owner. But that is the very essence of franchising. The
13 franchisor provides the support services. So, again, I
14 have simply contracted with Express Services, Inc. to be
15 my support.

16 Now, there are a few points that I'd like
17 you to consider.

18 My business is an independent partnership.
19 I have my own federal ID number, state and local tax ID
20 numbers, workers' compensation account, and state
21 unemployment insurance account.

22 My business is separate and distinct from
23 the franchisor, Express Services, Inc. The franchisor
24 has no oversight or responsibility for my day-to-day
25 operations.

1 I have sole responsibility for recruiting,
2 screening, hiring, disciplining, and terminating, and
3 training temporary workers. I assign them to their
4 respective clients.

5 I cover all recruiting costs, including
6 background checks, drug tests, skills evaluations, job
7 training, advertising, et cetera, et cetera.

8 I am responsible for covering overhead
9 costs and for securing and repaying any and all business
10 loans that we receive from banks.

11 I pay federal and local income taxes for
12 our internal staff as well as the employer's share of
13 social security, federal and state unemployment insurance
14 taxes, and workers' compensation.

15 I provide fringe benefits for my staff,
16 including health and life insurance, as well as vacation
17 and holiday leave. I maintain a company handbook
18 outlining staff duties and company policies.

19 I hire my own accountants and attorneys to
20 manage and oversee all of these functions. Please note,
21 the respective roles of my franchisor and my business
22 distinguish us from other franchise businesses,
23 especially those that provide goods and services to
24 walk-in customers, such as office supply stores and fast
25 food restaurants.

1 Now, here are some of the examples:

2 Because we are in the people business, and not the
3 over-the-counter product business, my business contracts
4 through the franchise agreement with Express Services,
5 Inc. to perform the administrative responsibilities of
6 receiving the accounts receivable from the client. My
7 business receives percentages of those invoices as
8 provided in the franchise agreement.

9 As an independent franchise owner, I have
10 the sole responsibility for the credit-collections
11 process should a client fail to pay an invoice. My
12 business bears the entire risk of financial loss.

13 Under our franchise agreement, the
14 franchisor assumes responsibility for processing my
15 payroll in order to ensure proper withholding and
16 payment. Although the franchisor processes the payroll
17 checks for my business, I am responsible for actually
18 issuing the checks to the employees.

19 In order to ensure compliance with
20 applicable rules and regulations, the franchisor serves
21 as employer of record for federal withholding purposes
22 for the temporary workers which I hire and place. I
23 conduct all day-to-day activities with respect to the
24 employment of the temporary workers.

25 Are the temporary employees the employees

1 of the franchisor or the franchisee? The answer is both.
2 The franchisor is the employee's own -- the franchisor is
3 the employer only for payroll purposes. As the franchise
4 owner, I am the employer who recruits, screens,
5 interviews, hires, trains, disciplines, assigns, and
6 terminates the temporary employee. And, again, I assume
7 all risk of loss.

8 All the franchisor does is to process the
9 payroll based upon the information I, as the owner, send
10 in. Once the check is processed, calculated, and
11 withholdings are deducted, the check is then sent back to
12 me, and I sign and issue checks to the temporary
13 employees.

14 The SBA, I hope, should consider -- I hope
15 you will consider the following factors when determining
16 small business status:

17 I bear the entire risk of the financial
18 loss from the business operations; I retain the majority
19 of the profits from its business; I maintain day-to-day
20 control over its operations; I provide financing for my
21 company without any recourse for indebtedness repayment
22 to the franchisor; there is no common ownership of
23 management between the franchise owner and the
24 franchisor. Therefore, I would like to be considered a
25 small business owner.

1 Thank you very much.

2 MR. BENDERSON: Thank you. Are there any
3 questions?

4 MR. BATEMAN: Does the franchisor have any
5 control over you?

6 MS. WILLIAMS: No, sir.

7 MR. BATEMAN: None whatsoever?

8 MS. WILLIAMS: No. We --

9 MR. BATEMAN: They have no ability to
10 control your business?

11 MS. WILLIAMS: No. I have complete
12 control over my day-to-day operations. I have contracted
13 their services in the form of payrolling.

14 MR. BATEMAN: Okay. Thanks.

15 MS. WILLIAMS: Uh-huh.

16 MR. BENDERSON: Thank you. We'll now hear
17 from Rocky Gill, Express Personnel Services.

18 MR. GILL: My name is Rocky Gill, and I'm
19 also a franchisee with Express Personnel Services. And I
20 have been living the American dream since 1995 in Tyler,
21 Texas as a franchisee for Express. Nearly 10 years I've
22 been doing that. And I'm here today to also ask you to
23 reconsider your standards for determining what a small
24 business is.

25 It's my understanding that if I needed a

1 loan today, that I would not qualify as a small business
2 owner. Yet, when I started my business in 1995, I did
3 obtain an SBA loan. So I'm just asking you to consider
4 our testimony today.

5 I am like Rhonda, we provide staffing for
6 companies in East Texas looking for employees, and I feel
7 like my relationship with Express Services, Incorporated,
8 my franchisor, is one in which I've contracted their
9 services to help me. They provide back office support
10 and handle the billing functions, payroll functions.

11 There are a few points I as well would
12 like you to consider:

13 I am an independent. I have an
14 independent corporation. I have my own federal
15 identification number, state and local tax identification
16 numbers. I have my own workers' comp insurance, as well
17 as my own state -- Texas state unemployment account.

18 My franchisor has no oversight for
19 day-to-day operations in my business at all.

20 I have the sole responsibility of finding
21 workers in my market and discipline them, hire them,
22 screen them, terminate them, whatever I need to do with
23 companies that I have gone out on my own and found. They
24 did not provide any lead for me.

25 I handle all advertising. They do not

1 come into my market and advertise. They don't pay one
2 dime of that. I pay every cent of that.

3 I cover all my recruiting costs,
4 including -- and screening, including background checks,
5 drug testing, skills testing, job training, and as I
6 mentioned, advertising.

7 I'm responsible for all my own overhead,
8 pay my own rent. Their name is nowhere on any of my
9 lease agreements. If I make a loan for my business, I
10 have to pay it all back.

11 I have an internal staff that helps in our
12 business, and I deposit federal income taxes for them, as
13 well as pay the employer's share of their social security
14 and medicare tax, federal and state unemployment
15 insurance, and workers' compensation.

16 And like Rhonda, I provide benefits to
17 those people that includes paid time off and other fringe
18 benefits.

19 I have attorneys and accountants that work
20 with me, and I pay every penny of that.

21 Couple of other points. As an independent
22 franchise owner, I bear the total responsibility for the
23 credit and collection process. When an account becomes
24 past due, I have to make the call and collect that money.
25 If it happens to go beyond a certain number of days

1 according to my franchise agreement, every penny of that
2 invoice is charged back to me, and I have to pay it
3 personally. I have had that happen a couple of times,
4 and that's not good.

5 Also, under our franchise agreement, the
6 franchisor assumes responsibility for processing my
7 payroll in order to ensure that proper withholding and
8 payment has been made. They process the payroll, and we
9 actually print the checks. I sign the checks, and we
10 distribute them in our office.

11 So in conclusion, I'd like to ask you to
12 consider the following factors in determining the size of
13 the small business:

14 As a franchisee, in my business I bear the
15 entire risk of financial loss from my business
16 operations; I retain the majority of the profits from my
17 business; I maintain day-to-day control over that
18 business; if I have to incur any debt, that's my problem,
19 I have to pay it back; and there is no common ownership
20 or management between Express Services, Incorporated and
21 me and my operation.

22 And I thank you very much for your time
23 today, and I appreciate it.

24 MR. BENDERSON: Thank you.

25 MR. ALEXANDER: Mr. Gill, I've heard you

1 speak and also Ms. Williams and Ms. Gilmore. Are you all
2 affiliated with the same franchisor?

3 MR. GILL: Yes.

4 MR. ALEXANDER: Okay. The information
5 that you are presenting here as it relates to lending and
6 et cetera, has someone given you-all an official position
7 on that, or is this coming from the franchisor saying
8 that you-all are not eligible?

9 MR. GILL: It's my understanding from
10 people who have tried to get SBA loans recently that
11 they've not been able to do it. Where I got that
12 information, I couldn't tell you. I've just heard it for
13 quite a while.

14 MR. ALEXANDER: Well, the concern I'm
15 having, I've heard three individuals speaking that, and
16 no one has presented any factual information, if they are
17 not an approved franchisor under our program or what --
18 you know, it's just what somebody said. And it kind of
19 concerns me -- excuse me -- because the three of you-all
20 are located within my area, to hear you saying this, but
21 no one can give me anything of fact to base this on.

22 And I would appreciate it if you-all have
23 something, that you would provide it to my office and let
24 us look into it, because I'm not aware of that. This is
25 more like hearsay. And I'd like to be sure there's not

1 somebody going around spreading some bad information.

2 And if the franchisor is not an approved franchisor, then
3 there are things that they can possibly do to come into
4 compliance.

5 So just to say that, you know, that's
6 hearsay. I would appreciate it if you-all would --

7 MR. GILL: Could I get some contact
8 information from you?

9 MR. ALEXANDER: Yes. I'll give you my
10 card if you will provide me with that information.

11 MR. GILL: I'll be glad to research that.
12 We are the -- the franchisor is the largest
13 privately-held staffing firm in the world. And all I
14 know is that we have a lot of people who have been
15 franchisees and have apparently tried. You know, maybe
16 they're -- maybe they're not doing something right. But
17 I'll certainly investigate that.

18 MR. BENDERSON: Do you have -- in your
19 agreement with the franchisor, do you have some kind of
20 clause that they can arbitrarily withhold their consent
21 to selling? If you want to sell the business, do you
22 have to have their consent to do that?

23 MR. GILL: Honestly, I couldn't tell you
24 that. I don't know.

25 MR. BENDERSON: I mean, there's a lot of

1 franchisees that are eligible for SBA programs, and I've
2 seen a couple where -- usually the oil companies, where
3 they say they can arbitrarily withhold their consent to
4 sell, but generally, it's not a big deal to have a
5 franchisee eligible.

6 MR. GILL: Okay. Well, I mean, like I
7 said, I qualified for a loan when I -- when I started 10
8 years ago, so. But we've had a lot of people that have
9 applied for franchises since that time, and I can't
10 imagine that they're all missing the boat somewhere.

11 MR. MONTES: You said you qualified for a
12 loan 10 years ago. Did you, in fact, receive an SBA
13 loan?

14 MR. GILL: I did. I guess you guarantee
15 loans; is that right?

16 MR. MONTES: Yes.

17 MR. GILL: That's what happened with me.
18 Is there anything else?

19 MR. BENDERSON: No. Thank you.

20 MR. GILL: Thank you very much for your
21 time.

22 MR. BENDERSON: Thank you.

23 Darius Berry, Berry Logistics &
24 Transportation.

25 MR. BERRY: Good afternoon. My name is

1 Darius Berry. I'm president and CEO of Berry Logistics &
2 Transportation. We're a 24-employee organization with
3 facilities in Dallas, Queens, New York, and Brunswick,
4 Georgia.

5 Seven separate government studies have
6 shown that billions of dollars in small business
7 contracts are going to large corporations. SBA OIG
8 Report No. 5-15, dated February 25th, 2005 states, one of
9 the most important challenges facing the Small Business
10 Administration and the entire federal government today is
11 that large businesses are receiving small business
12 procurement awards, and agencies are receiving credit for
13 these awards.

14 No. 2, should the SBA establish a tiered
15 system for size standards? I am against the tiered size
16 standards. Adding a tiered system will complicate the
17 size standards structure. Raising the small business
18 size standards to include 1,000- and 1,500-employee
19 companies is wrong and detrimental to the small
20 businesses of America. Since 89 percent of all U.S.
21 firms have less than 20 employees, and the average small
22 business has less than 15 employees, a 1,500-employee
23 size standard is 100 times larger than the average small
24 business.

25 You will be forcing small businesses to

1 compete against large companies for small business
2 contracts. You'll be limiting opportunities for small
3 businesses. You will be limiting opportunities for small
4 businesses.

5 I am in favor of simplifying the size
6 standards, not adding another obstacle to the -- I am in
7 favor -- excuse me -- the size standards and not adding
8 another obstacle to the opportunities.

9 And I'm not in favor of letting large
10 businesses compete for small business contracts. The
11 tiered system will allow loopholes for larger companies
12 to gain small business status due to the inability of the
13 SBA to police such a system.

14 And I'd like to incorporate into sports
15 lingo. I don't know how many of you guys are familiar
16 with high school, but Texas sports lingo. But there is
17 no way that a 1A Wink school -- Wink, Texas will be able
18 to compete with a 5A Plano. And by changing these --
19 going to these -- the tiered systems, that's what you're
20 putting us small 25-employee businesses against, 1,500.

21 Berry Logistics & Transportation cannot
22 compete against Ryder Transportation. I have five
23 trucks. I can't compete with someone who has 1,500
24 trucks or someone who has 1,000 trucks.

25 What are the approaches that the SBA

1 should take to grandfather small businesses that may be
2 adversely impacted by any future restructuring?
3 Grandfathering should not be allowed. Currently,
4 significant small business dollars are being awarded to
5 large businesses.

6 Grandfathering would allow large
7 businesses to continue to tie up billions of dollars of
8 small business contracts to the detriment of the
9 legitimate small businesses. Billion-dollar firms do not
10 need a five-year extension to help them leave the small
11 business program.

12 Should the manufacturer wholesale trade
13 size standard be changed? The non-manufacturer size
14 standard should be returned to the 100-employee size
15 standard. In 1985, the SBA increased the small business
16 size standard for non-manufacturers from 100 to 500
17 employees. Twenty-three million small businesses with
18 less than 100 employees deserve fair and equitable
19 opportunities to bid and win government contracts.

20 Ninety-eight percent of all U.S. firms
21 have less than 100 employees, and 89 percent have less
22 than 20 employees. The SBA has received over 5,000
23 comments from small businesses requesting the change back
24 to the 100-employee standard. The SBA has failed to
25 implement this change.

1 I want to thank the American Small
2 Business League for their efforts to stop fraud and abuse
3 in the small business contracting. And finally, I want
4 to say the Small Business Act established the SBA to
5 protect the interests of small businesses and to help
6 ensure that a fair and representative share of government
7 contracts are placed with small businesses.

8 Thank you.

9 MR. BENDERSON: Any questions?

10 MR. JORDAN: Yes, I just have a couple of
11 questions. You were not here this morning?

12 MR. BERRY: No, I wasn't.

13 MR. JORDAN: Okay. Because I think we've
14 addressed these a couple of times. SBA has not suggested
15 tiering size standards. SBA has not suggested
16 grandfathering. SBA has not proposed anything, as a
17 matter of fact. What we have here is a request for
18 comments, such as yours, on whether or not you think
19 these are viable situations.

20 SBA has issued a proposed rule in March of
21 2004. It was withdrawn on July 1st because there were so
22 many comments that brought up these other issues, such as
23 grandfathering. They were suggested by small businesses
24 like yourself, not by large businesses. Brought up
25 tiered size standards. They were brought up by other

1 small businesses, not like yourself -- like yourself.

2 And SBA is therefore seeking additional
3 information and additional comments on that. We didn't
4 ask for comments on those issues back then. Now, we are,
5 because several people brought those issues up, as well
6 as the other eight or 10 issues. They were brought up by
7 public -- by small businesses, mostly, such as yourself.

8 And that's why we're asking for comments,
9 which we want. We realize you're opposed to them.

10 MR. BERRY: Okay. Right.

11 MR. JORDAN: Nobody has supported them
12 yet, at least this morning. Nobody here -- or today has
13 supported them. But that's what we have to hear.

14 MR. BERRY: All right. Thank you.

15 MR. JORDAN: Thank you for your comments.

16 MR. BENDERSON: Thank you very much.

17 Demetria Wise, Wise Business Services,
18 Inc.

19 Terri Quinton, President, Q2
20 Communications, Inc.

21 MS. QUINTON: Good afternoon. My name is
22 Terri Quinton. I am the president and owner of Q2
23 Communications. We're a marketing and commercial
24 printing firm. I am here, however, not necessarily
25 representing Q2 Communications. I am a small business

1 owner. But also I am the chair of the Minority Business
2 Input Committee for the Dallas/Fort Worth Minority
3 Business Council, which is a mouthful.

4 But that council is composed of over 600
5 minority businesses located and that do business in the
6 Dallas/Fort Worth area, most of which are small
7 businesses. So my comments kind of relate to my chairing
8 that organization, and hearing, and listening to their
9 input on SBA, but also on business opportunities.

10 First of all, our suppliers are composed,
11 like I said, of certified minority businesses who work to
12 secure business opportunities for suppliers with both
13 Fortune 500 companies and governmental and public
14 agencies.

15 Our goal, as well as I hope the goal of
16 SBA, is to encourage and support the development of small
17 businesses, and to ensure that they have a more equal
18 playing field when it comes to securing business and
19 growing their companies. We all understand that life
20 ain't fair; however, what we can do to make the field
21 more consistent helps us all.

22 We all know the statistics about the
23 impact of small business upon our economy and our
24 communities. What we should be endeavoring to do here
25 and elsewhere is to make sure that small businesses are

1 competing with small businesses, not multimillion dollar
2 shells created to capture more of the market.

3 What is decided by SBA should be decided
4 in the vein of do no harm to small businesses. What we
5 want is a \$5 million business in an industry competing
6 against a similar-sized business, not one a 100 million
7 in assets. Clearly, there are people today who
8 understand the rules and are finding ways to go around
9 them. That's going to happen. We see it with minority
10 certification. We see it with women certification. We
11 see it with self-certification.

12 The whole issue with venture capitalists
13 to a large extent as we view it is just that. They
14 understand where the real opportunities for growth are,
15 and they're trying to figure out ways to capture more of
16 the revenues and the rewards. We need enforcement of the
17 rules for whatever the rules are that are determined.

18 It seems once we learn the rules of small
19 businesses, and we learn to compete, someone is always
20 ready to change the rules to assist them. I can cite
21 examples of Haliburton, ACS, and others, but I won't. We
22 ask to enforce the certification in the programs that you
23 do have so that large companies are impacted, not small
24 companies.

25 Using the sizing standard makes sense for

1 the industry in construction and IT as it relates to
2 revenue, but certainly not the number of employees. This
3 is what our constituencies are telling us, and it makes
4 sense to me. Revenue seems to be actually the best
5 standard by industry because it determines, to a degree,
6 how many employees you can hire.

7 Lastly, examine the impact of bundling on
8 your decisions. In the government or private sector,
9 many of the local government agencies, whether we're
10 dealing with Dallas/Fort Worth Airport in our market or
11 DART, Dallas Authority Rapid Transit system, they look at
12 the standards that you set and evaluate how they set
13 their standards. More corporations are bundling larger
14 contracts, so in order for small businesses to compete,
15 they often have to be a tier two or three or four
16 supplier to that major company that wins the bid.

17 If you want to help small business,
18 consider unbundling where you can. Insure prime
19 suppliers are certified suppliers, and use certified
20 suppliers in the bids they win. Use third-party
21 certification, not self-certification.

22 I can only speak for the Dallas/Fort Worth
23 Minority Business Council, but I know that council for
24 the minority business suppliers that we have, I know the
25 minority businesses. The Council takes -- makes site

1 visits, they ask questions of the principal owner, they
2 make sure the owner is the one who operates and owns that
3 business.

4 I have attached to my comments that I'm
5 now giving to a proposal submitted by the Minority
6 Business Summit committee which is made up of many
7 councils like ours around the country that talks about a
8 5-10-5 tiered solution. And I just -- I'm not going to
9 go through the whole thing, but I am attaching it for you
10 to read.

11 I want to thank you for this opportunity
12 to speak. I hope you understand by the number of people
13 who showed up in the Dallas area that we are interested,
14 and that this issue is important to us. It impacts our
15 business; it impacts our livelihood.

16 Whatever you do, I would hope that before
17 anything is actually instituted, we once again have a
18 chance to come back here, perhaps, and hear it from the
19 people like you who are supposedly representing our best
20 interests as to what is going to be instituted.

21 Thank you.

22 MR. BENDERSON: Any questions? Thank you
23 very much.

24 MS. QUINTON: Thank you.

25 MR. BENDERSON: Greg LeBahn, TIG,

1 Technology Integration Group.

2 MR. LeBAHN: Yeah. My name is Greg
3 LeBahn. I'm the Texas Manager of Sales and Operation for
4 Technology -- Technology Integration Group. We are a
5 hardware and software resaler, a small minority-owned
6 business with 275 employees.

7 You may have actually heard from some of
8 my counterparts in some of the other markets across the
9 country, and will probably be hearing from some
10 additional ones regarding our personal opinions -- both
11 our personal opinions, as well as our corporate opinion
12 on -- on matters relating to size standards changes.

13 We are -- I opened up operations in South
14 Texas in January 2004. And because of TIG's success in
15 leveraging our small business status, we've been
16 successful in hiring 10 employees and having -- putting a
17 foothold in this -- in this market of Texas. We
18 anticipate continued growth and continued job creation as
19 a result of our -- again, our small business status.

20 That is directly related to the scale and
21 the type of services we are able to offer to our clients
22 because of our size. Where that comes into effect is
23 that in our particular industry, if there were changes
24 made that would drop those numbers down to, say, 100
25 employees versus 500, most of that business that we do

1 today would be moved to small -- or to large
2 organizations, the IBMs, the -- those types of
3 organizations that -- that have a much broader range of
4 services, and a much larger footprint, and the ability to
5 scale better to -- they would not go to small businesses.

6 Over 75 percent of our business is at risk
7 today because of proposed changes. This is -- any
8 potential chance in the size standards would possibly
9 force us to take steps that would result in job loss,
10 restructuring, obviously, potential loss of business.

11 As I mentioned, our industry is dominated
12 by big business, and we are successful because of our
13 small business status. But we also, as I mentioned
14 earlier, fulfill a unique position that small -- very
15 small organizations cannot do. We have a national
16 footprint. We have deep competencies in technical areas,
17 and we have financial resources necessary to finance
18 large procurement deals.

19 Again, small organizations, less than 100,
20 are going to have difficult times fulfilling those types
21 of requirements in both federal and large corporate
22 contracts, and the net effects will be that those
23 contracts will inevitably go to big business at the loss
24 of -- at the expense of small business.

25 That's all I have at this point. I'd just

1 like to reiterate a couple of points. TIG and myself, we
2 do not believe there is a reason for change at this
3 point. We do believe that there is a need for more
4 stringent enforcement of the current rules that are in
5 place. The standards as they exist today, if they were
6 enforced, would benefit all small business from 500
7 employees on down.

8 As I mentioned earlier, we believe it
9 helps large business, and we believe that there is a
10 potential for increased unemployment as a result of these
11 types of changes. That's all I have.

12 MR. BENDERSON: Well, thank you very much.
13 Any questions?

14 MR. JORDAN: You said you're a resaler of
15 hardware and software.

16 MR. LeBAHN: Yes, hardware and software
17 resaler.

18 MR. BENDERSON: All right. Next speaker
19 will be Sandra Lugo-Camacho, Mobile Massage.

20 MS. LUGO-CAMACHO: Yes, how are you?

21 MR. BENDERSON: Fine.

22 MS. LUGO-CAMACHO: Thank you very much.

23 MR. BENDERSON: Maybe you could explain --
24 I'm just curious if you have a role in government
25 procurement.

1 MS. LUGO-CAMACHO: Actually, when I
2 started 16 years ago, I went to SBA and asked the senior
3 citizens to help, (inaudible) that retired, and they
4 didn't know where to put me. They said, well, the
5 federal government -- I said, I want to go into the armed
6 forces and all this big -- I mean, how (inaudible) --

7 MR. JORDAN: She's having trouble hearing
8 you.

9 THE REPORTER: I don't know what you're
10 saying. I'm sorry.

11 MS. LUGO-CAMACHO: That's okay. Well, he
12 asked me a question, so I was answering it.

13 MR. BENDERSON: She's taking down your
14 words.

15 MS. LUGO-CAMACHO: Oh. So you want to
16 read my lips, or what? Can you hear me?

17 THE REPORTER: I can hear you.

18 MS. LUGO-CAMACHO: Okay. Cool.

19 MR. BENDERSON: Do you travel around
20 and --

21 MS. LUGO-CAMACHO: Yes, I do go to sites
22 of calls since 1991.

23 My name is Sandra Lugo-Camacho, and I've
24 been in business since 1991. I'm a sole-proprietress,
25 so I'm at the very end of the line here when it comes to

1 small business. I don't even consider myself small
2 business. I'm a microbusiness. And in 16 years, I
3 haven't had health insurance. My health insurance is
4 eating well and exercising and staying active.

5 Part of my challenge as a small
6 proprietress was that I jumped in. Up to this day, I'm
7 still struggling with the management administration part.
8 And as I found out, I'm Puerto Rican and I'm gay, so keep
9 adding. And I'm very myself, very out, very unique, so
10 the playing field is not level, especially for unique,
11 different people like me.

12 And when you add more obstacles, like they
13 have mentioned here, it -- I mean, the federal law
14 influences everybody. SBA influences everybody, or at
15 least the people who are in business. So for people like
16 me that are at the very end of this -- the line, we
17 really feel it. This administration is killing me.
18 What's happening in our world is killing me.

19 So my goal is to ask you guys to --
20 however you can influence the rules, the regulations,
21 it's to ask you to look out more for people like me, not
22 only not with employees, but also income. I don't make,
23 I mean, not even \$40,000 a year. I mean, if I need help,
24 I subcontract.

25 I don't have what a lot of people here who

1 are speakers have. So I need for the big guys -- I mean,
2 for people like you to look out for people like me at all
3 levels.

4 And, as a matter of fact, in defense of
5 this gentleman here, I copied this morning from the SBA
6 Web site, whatever, and there is to the second gentleman
7 here -- they did mention tier -- the tier size standards
8 and grandfathering there, and you can read it there for
9 you to know.

10 MR. JORDAN: I will. When you're
11 finished, I'd like to explain.

12 MS. LUGO-CAMACHO: Sure. So I don't know
13 what it's about, but those words are mentioned there at
14 the end, and they say whatever. So that's basically what
15 I want to make you aware, maybe remind you.

16 MR. BENDERSON: What policies are hurting
17 your business? The administration policies?

18 MS. LUGO-CAMACHO: Well, the fact that --
19 I mean, everything, if you're going to change size,
20 volume, number of employees, standard for income, I mean,
21 everything is going to affect me.

22 MR. BENDERSON: But at your size, you'd
23 have a long way to go before you would be considered
24 large.

25 MS. LUGO-CAMACHO: Exactly. So if you're

1 going to keep adding more, you know, obstacles, and
2 more -- you know, it's going to be worse for me.

3 MR. BENDERSON: But, I mean, it would take
4 a long time to get to 100 -- and I'm not advocating
5 anything, but it would take you a long time to get to 100
6 employees, or if you did it on revenue --

7 MS. LUGO-CAMACHO: I don't even want to
8 get there. I like simplification. You guys are trying
9 to simplify; I'm trying to simplify. You know, keep it
10 simple. So, you know, one size doesn't fit all.
11 Actually, one size doesn't fit most of them.

12 So you know, you cannot compare my
13 business -- I mean, you cannot put me up there, even with
14 20 or 50 people, I mean. It's not fair, in the income
15 and size.

16 MR. BENDERSON: So you would think you
17 would want like a minicategory, a microcategory.

18 MS. LUGO-CAMACHO: Yes. Actually, yes. I
19 would like for you guys to come down, to simplify even
20 more. I mean, to diversify even more for people like me
21 that are at the end of the rope.

22 MR. BENDERSON: Okay. Anybody have any
23 questions?

24 MR. JORDAN: No. I'd like to answer her
25 question though. We do mention that, yes, we do, in the

1 advance notice. Only because other people brought it up
2 to us, and we're asking for comments, what the other
3 people like you think about it.

4 So far today, the people that have spoken,
5 except for one, are opposed to having tiered size
6 standards. And I believe, if I understood that lady
7 correctly -- she's left -- the lady from -- her name is
8 Terri -- Terri Quinton, who was here on behalf of the
9 minority -- the attachment which she attached goes into
10 quite a bit of detail on tier size standards with some
11 suggested ones to allow a company to grow from level to
12 level.

13 I've seen that presentation, that's why I
14 know that. She just didn't want to read the whole thing
15 because it's long. But it does go into that. But so
16 far, that's the only one I know that's supporting it
17 right now. But it is a point of view. It's a valid
18 point of view just like being against it is a point of
19 view.

20 And we're going to have to make the best
21 decision, if anything, on what we think is best for small
22 businesses. And we won't make a decision, as a matter of
23 fact. If we do anything, it will be a proposed rule.
24 We'll only propose it and ask for comments. Again,
25 because this is not a proposal. It's just what you

1 think.

2 MS. LUGO-CAMACHO: Well, I don't know.

3 I --

4 MR. JORDAN: Sure. I understand.

5 MS. LUGO-CAMACHO: I'm a very
6 simple-minded person, and, you know, when you said to
7 this gentleman that you guys -- I mean, that
8 grandfathering and the tier size standards are not being
9 considered or mentioned is not true.

10 MR. JORDAN: They're mentioned. Yes.
11 It's mentioned, but we're not proposing it.

12 MS. LUGO-CAMACHO: Okay. Well --

13 MR. JORDAN: It's mentioned because we say
14 if we propose anything, we need this additional
15 information first to decide what we're going to do. Now,
16 you have other things to do like run a business. You
17 don't have time to read all of these things. It can be
18 long and tedious to read these, I understand.

19 MS. LUGO-CAMACHO: Well, and this can be
20 confusing.

21 MR. JORDAN: Yes, it is. Yeah. And they
22 have to be written certain ways.

23 MS. LUGO-CAMACHO: Exactly.

24 MR. JORDAN: We are required to put it in
25 a certain language, but you've got more important things

1 to do than read every regulation, like keep your business
2 going.

3 MS. LUGO-CAMACHO: I like to know. Thank
4 you very much, but, basically, that's what I want, that's
5 what I'm asking, that's where it comes from, and that's
6 what I would like to suggest.

7 MR. JORDAN: Okay. We appreciate your
8 comments.

9 MR. BENDERSON: Well, thank you.

10 MS. LUGO-CAMACHO: Thank you.

11 MR. BENDERSON: Ray Marsh, General Manager
12 and President of RAM Contracting.

13 MR. MARSH: Good afternoon, everybody. As
14 he just mentioned, I'm Ray Marsh, president of RAM
15 Mechanical. We're a contracting -- a mechanical
16 contracting company. I'm also on the Board of Directors
17 of the Minority Business Council and president and board
18 member of the Black Contractors Association. So excuse
19 my point of view for being construction related, but it
20 is.

21 My comments are few, but they are to the
22 point. The employee-based standards are unfair and
23 unrealistic from a construction standpoint based on the
24 fact that just about every construction company uses
25 contract labor, temporary labor, part-time, seasonal, and

1 job-based labor. And employee-based is just not an
2 accurate standard.

3 There are construction companies that are
4 much larger than mine from a revenue standpoint that have
5 fewer employees than I do, and that's based on the fact
6 that I self-perform our work, and a lot of the
7 construction companies don't.

8 As I mentioned, revenue-based standards
9 are more accurate and give a true indication of business
10 size. Large and mid-size construction companies have a
11 smaller number of employees since the work -- and I
12 stress work -- is subcontracted out. There is no way
13 to -- for me and my company and companies like mine --
14 and I do see some representatives here -- to compete with
15 billion dollar or \$100 million companies.

16 As I mentioned these companies
17 self-perform very little. They do provide some job
18 oversight, but we self-perform all of our work and can
19 easily have more employees than those guys. And as I
20 said, my point is, revenue-based standards are more
21 accurate, and that's it.

22 Thanks and God bless.

23 MR. BENDERSON: Thank you very much. Any
24 questions? Thank you.

25 Martin Burrell -- Burrell. I'm sorry.

1 MR. BURRELL: Mr. Alexander, and I don't
2 know the other members on the panel. Who am I speaking
3 to?

4 MR. BATEMAN: John Bateman, Area Director
5 for Government Contracts, SBA.

6 MR. BENDERSON: Eric Benderson, General
7 Counsel.

8 MR. BURRELL: SBA in Washington?

9 MR. BENDERSON: Yes.

10 MR. JORDAN: I'm Carl Jordan from the
11 Office of Size Standards in Washington.

12 MR. MONTES: Joe Montes, the Regional
13 Director.

14 MR. BURRELL: Okay. My name is
15 Martin Burrell. I am the owner of the -- principal of
16 the Burrell Group. We're a business-to-business
17 consulting firm. And I have some prepared comments I
18 want to provide. I understood we had five minutes, so I
19 prepared these comments, and I'll read them as I prepared
20 them. And I will give you a copy of it.

21 Again, thank you for allowing us to
22 provide a forum to receive testimony regarding the SBA's
23 desire to reform 13 CFR, which is the code that relates
24 to size standards by which small businesses are formally
25 defined by the federal government.

1 In March of 2004, the Small Business
2 Administration requested some feedback from small
3 businesses like mine regarding size standards that were
4 related to these issues. Ninety percent of us small
5 businesses were certain -- you know, and that is most
6 small minority businesses were against many aspects of
7 those proposals.

8 And today, over a year after the initial
9 commenting period ended, we're still opposed to many of
10 these changes, even though you -- we appreciate you going
11 around the country on this 11-city tour which is designed
12 to receive feedback from small and minority-owned
13 business owners, but the message is already clearly
14 stated by small businesses.

15 However, I want to restate our position
16 again. We're very clear about the issues and how they
17 affect small businesses.

18 For this clarity, I want to thank and
19 acknowledge the work of the American Small Business
20 League and the Minority Business Enterprise Legal Defense
21 & Education Fund out of Washington, which is MBELDEF.
22 Both national organizations have provided an excellent
23 analysis so that small businesses like ours -- as you
24 indicated, it's tough for us to keep up with all of these
25 regulations. So we rely on many of our associate groups

1 and all, and they've assisted us with helping us to
2 better understand how these proposals would really affect
3 us. So we appreciate that.

4 We also appreciate the local involvement
5 from the Dallas Black Contractors Association. You heard
6 from Mr. Marsh again. The Hispanic Contracts
7 Association, the Dallas Black Chamber of Commerce, and
8 the Greater Dallas Hispanic Chamber of Commerce, and many
9 other involved agencies who are involved in this area who
10 are concerned about the plight -- the plight of small and
11 minority businesses. Not the flight. Not the
12 f-l-i-g-h-t, but the plight of small minority businesses.

13 Our appeal to you is this: We would say
14 that you should return the original SBA size standards
15 back to the 100-employee size standards. By returning
16 the nonmanufacturing size standard of employees from 100
17 to 500, the SBA will allow more than about 23 million, we
18 estimate -- around 23 million small businesses a fair and
19 equitable opportunity to bid and win -- to bid and win
20 government contracts. Not a handout, but to bid and then
21 win those contracts.

22 Now, we say no -- just simply no to this
23 grandfathering concept. Just let me back up just a split
24 second and say that the term itself is suspicious. It
25 comes from the discriminatory practices of certain

1 southern states against African Americans.

2 In the late 19th and 20th centuries, some
3 southern states had laws requiring payment of a poll tax
4 or the taking of a literacy test before one could vote.
5 The poor and the illiterate were denied the right to
6 vote.

7 This was race-neutral except for the
8 clause in the Constitution that exempted someone from
9 poll taxes or literacy taxes if they -- their grandfather
10 had -- had the right to vote. That's where that came
11 from, this concept of grandfather clause. This meant
12 that virtually all whites whose grandfathers could vote
13 before the imposition of these laws were allowed to vote,
14 while most African Americans were denied the right to
15 vote under this grandfather clause.

16 Now, over the years the term has lost the
17 racial stigma, and we are just kind of throwing it
18 around, and it no longer connotates racial bias. But for
19 those of us who were in the vanguard -- those of us who
20 were in the vanguard who have the history, we know that
21 grandfathering by its very name -- we automatically
22 become alert and suspicious when we hear that term
23 grandfathering.

24 So in this context, grandfathering will
25 allow large businesses, which are predominant Anglo

1 owned, to keep their small business, which are -- a very
2 large number of them are minority-owned businesses --
3 will be allowed to keep their money for five years more.
4 They will cause dramatically more harm than good for
5 small businesses.

6 Thirdly, we can't -- we can't allow a
7 tiered system to be put in place either. That's a clear
8 indication that SBA's clearly demonstrated its inability
9 to manage a complex system, and a tiered system would
10 only serve to further complicate matters for legitimate
11 small businesses. We think you ought to just simplify
12 it.

13 Venture capitalists are important to many
14 industries. However, allowing corporate venture
15 capitalists to own 51 percent of a legitimate small
16 business to retain business -- small business status
17 hurts. Fronts, shams, is what you think about when you
18 hear about this kind of thing.

19 And we -- I know quite a bit about that
20 because I was one of the founders of the North Central
21 Texas Regional Certification Agency where we -- our focus
22 was try to eliminate fronts and shams from masquerading
23 as small and minority businesses. And so we would be
24 very concerned about that.

25 Affiliation regulations for franchises

1 gives them too much control over the franchisees, and it
2 gives them a competitive advantage over what we call
3 independent business people.

4 And so, also, the current size standards
5 are not difficult to understand, but the SBA's lack of
6 enforcement of the existing laws that exist on the books
7 as it relates to large businesses who masquerade as small
8 businesses -- and, of course, you haven't prosecuted
9 anybody for that, even though it's a crime -- then we
10 would recommend that you consider that.

11 So, again, please keep in mind that over
12 90 percent of the responses received by the SBA opposed
13 the SBA's most recent attempt to adopt policies that
14 relates to this grandfathering, the tiered system, and
15 exclusion of venture capitalists and so on and so forth.
16 And so we want you to understand that 90 percent of the
17 people still oppose. It's probably even increased now.

18 So I want to thank you for the opportunity
19 and the time that you've come to travel all the way to
20 Dallas, Texas to come and hear us, but the message is the
21 same as it was before. And we just wanted to reiterate
22 that.

23 Thank you so much. I'll stand for
24 questions if you have any.

25 MR. BENDERSON: Thank you.

1 MR. JORDAN: Did you miss -- you may have
2 missed what I said this morning about that.

3 MR. BURRELL: I wasn't here this morning.

4 MR. JORDAN: Right. SBA has not attempted
5 to adopt anything. Nothing except the proposed rule last
6 summer, which was really directed at individual size
7 standards. Venture capital has nothing to do with
8 government contracting. The questions about venture
9 capital is limited to a very specific program and the
10 eligibility of the SBIR Program. It has nothing to do
11 with government contracting or lending or anything else.

12 But when you talk about grandfathering,
13 all these things, SBA hasn't proposed. SBA is not trying
14 to propose them. SBA is not --

15 MR. BENDERSON: Wow. Wow. Wow. Let me
16 try and clear it up. In other words, we're not proposing
17 a formal rule of grandfathering. We're just listening to
18 what people think about these concepts that were
19 suggested by others.

20 MR. JORDAN: That's correct. Other
21 businesses suggested these, not the SBA. When we put out
22 the proposed rule last year, the comments that came in,
23 they suggested grandfathering. They suggested -- I don't
24 know where the five years came from, but nobody suggested
25 five years. I don't know where that idea came from.

1 I've heard it a couple of times.

2 But the SBIR came about because -- the VC
3 came about because of the SBIR. But all those issues,
4 the grandfathering, increasing from 100 to 500
5 employees -- I don't know where that came from -- but SBA
6 has not proposed.

7 MR. BURRELL: Well, we don't have anything
8 to worry about then.

9 MR. JORDAN: Pardon me?

10 MR. BURRELL: We have nothing to worry
11 about.

12 MR. JORDAN: Well, I can't tell you
13 whether you have anything to worry about or not. I'm
14 just telling you that SBA has not proposed it, and a lot
15 of the comments we're receiving today are based on a
16 misunderstanding, perhaps, that SBA has proposed them.

17 MR. BURRELL: Well, that's great.

18 MR. JORDAN: And SBA has not. SBA has
19 said other people proposed these to us. We're asking the
20 rest of the interested parties in the United States to
21 tell us what you think, too.

22 MR. BURRELL: Okay. Well, we're
23 delighted, and that's what I want to hear. And you're on
24 the record as saying that (inaudible) --

25 (Speaking simultaneously.)

1 MR. JORDAN: (Inaudible) SBA has not
2 proposed a thing. We don't know what we're going to
3 propose, if anything.

4 MS. LUGO-CAMACHO: Sir -- excuse me. At
5 the same time, that's why you guys are traveling around
6 the country because of these recommendations and --

7 MR. JORDAN: Right. We have the Advance
8 Notice of Proposed Rulemaking that came out in last
9 December. We opened up --

10 MR. BURRELL: Well, I'm just very blessed.
11 I mean, now I know the SBA is going to protect our
12 interests, so --

13 MR. JORDAN: We hope so.

14 MR. BURRELL: Okay. Well, we --

15 MR. JORDAN: We plan to.

16 MR. BURRELL: Well, we'll be watching, but
17 we're certainly glad to know that.

18 MR. JORDAN: And other small businesses
19 also say this is what we think you should do. We think
20 we should ask the rest of the small businesses.

21 MR. BURRELL: Okay. Okay. Well, you
22 know, we're certainly glad that -- you know, whenever
23 something comes up under this administration, it has a
24 tendency to kind of quietly come out as smoke, and then
25 the fire comes right in behind it.

1 So as long as we, you know, know that the
2 SBA is with us and what we perceive to be some of the
3 issues, then we're --

4 MR. JORDAN: And anything we will do will
5 be a proposed rule at a later date. Anything we do come
6 up with.

7 MR. BURRELL: Okay. Okay. Any other
8 questions? Okay. Thank you so much for your attention.

9 MR. BENDERSON: Thank you, sir.

10 Detrick DeBurr, Digital Rhythm, Inc.

11 Mike Trevino, Jr., Vice President, Trevino
12 Mechanical Contractors.

13 James Carpenter, Vice President, Trevino
14 Mechanical Contractors.

15 E J A Richardson, President, EJAR STAR &
16 Associates, Inc. Moving right along here.

17 Reuben Ratcliff, W&R Technology.

18 Martha Parker, Owner/President, Antwine
19 Floorcovering.

20 Larry Hall, President/CEO --

21 MR. ALEXANDER: He was here this morning.

22 MR. BENDERSON: That's right.

23 Dan Villegas -- I think that's the way you pronounce
24 it -- from Fort Worth. Did I pronounce that right?

25 MR. VILLEGAS: Yes.

1 Good afternoon. My name is Dan Villegas.

2 I'm the chairman of the Fort Worth Hispanic Chamber of
3 Commerce, and I appreciate the opportunity to be with you
4 today to testify at this hearing as it relates to the
5 SBA's desire to reform the size standards.

6 On behalf of our board and your
7 membership, I'm here today to represent them and to
8 comment on these proposed changes. You've already heard
9 previous testimony that there are already billions of
10 dollars that are being spent with companies that are not
11 small businesses. We appreciate the SBA's efforts to --
12 attempts to remedy this situation, but we would not want
13 any of these changes to be made that would hurt the small
14 businesses who are actually complying with the rules and
15 with the regulations.

16 In our opinion, the size -- the existing
17 size standards were not that difficult really to
18 interpret, and the majority of our membership do fall
19 within -- within the existing size standards. However,
20 fast-growing Hispanic businesses, especially those in
21 construction, the size standards can become an obstacle
22 in their attempts to do business with the federal
23 government.

24 And then when you combine that with the
25 problem of contract bundling, it just makes it even that

1 much more difficult for a Hispanic business to obtain
2 these federal contracts.

3 We would like to just make a few
4 suggestions as it relates to the changes in the
5 standards. I'm not going to go into the other ones that
6 have already been covered today, but one thing that I
7 guess we would hope that would maintain as part of the
8 size standard requirements is that for certain
9 industries, it is based off of revenues, and for other
10 industries, it's based off of employees kind of very
11 similar to what it is today.

12 We would hope that that would continue to
13 be the case. We would not want to see it where there
14 would be double sizing where, you know, they have to meet
15 both criteria. We would hope that they would be able to
16 keep those separate.

17 We would also hope that joint ventures
18 between small businesses would not be penalized with the
19 new changes. A lot of times business owners and
20 businesses have difficulties being able to win and
21 obtaining financing for these large contracts. And if
22 they can joint venture and not be impacted by these
23 changes to the size standards, that would help a lot of
24 these business owners to get more business from the
25 federal government, and also help the government agencies

1 in obtaining their goals.

2 And I'm not sure if anybody in previous
3 testimony has addressed the size standards for
4 contractors, but one of the suggestions that came from
5 our National Hispanic Chamber of Commerce organization,
6 which would be the United States Hispanic Chamber of
7 Commerce, a suggestion of theirs was that you consolidate
8 all of the size standards for contractors into one -- all
9 into one category, and have that size standards be based
10 on revenues of \$150 million, which sounds pretty high,
11 but when you consider -- let me just give you an example
12 of where -- why this -- why that number might actually
13 work.

14 In Fort Worth, Texas we have a project
15 that is about to be started. And, essentially, it's
16 going to build an island on the northern end of downtown.
17 And there's about half a billion dollars of money that's
18 going to go into that project.

19 So you can see, we have businesses who
20 want to be able to bid on those jobs and get financing to
21 participate in that particular project. If the revenue
22 standard remained at 21 million or so, they're going to
23 have a hard -- you know, they're going to easily bump up
24 against the wall, and we're going to have a situation
25 where, you know, not very many of our members are going

1 to be able to -- to really benefit from a project of that
2 size being built in our community.

3 And this is just one example of one
4 project in our community. And I'm sure there are lots of
5 other communities around the country that have similar
6 situations and similar projects. And so I would ask that
7 y'all consider that -- maybe creating one size standard
8 for contractors, and set it at a level that allows
9 businesses to really be able to grow and to expand. And
10 as they grow, one of the things that we encourage with
11 our membership is that they mentor others that are
12 following behind them. So it creates a win/win
13 situation.

14 That concludes my remarks. I'd be happy
15 to answer any questions you might have. I do appreciate
16 you giving me the opportunity to be here and testify
17 today.

18 MR. BATEMAN: Were you advocating a number
19 of employees for contractors or --

20 MR. VILLEGAS: Just the revenue.

21 MR. BATEMAN: Just the revenue. And
22 you're advocating \$150 million.

23 MR. VILLEGAS: Across all -- across all --
24 just combine them all into one.

25 MR. BENDERSON: Okay. Any other

1 questions? Thank you very much.

2 MR. VILLEGAS: Thank you.

3 MR. BENDERSON: One other thing, is that
4 the general consensus of your organization?

5 MR. VILLEGAS: That was the position of
6 the United States Hispanic Chamber of Commerce, and we
7 are a member of that organization, so...

8 MR. BENDERSON: So are you speaking for
9 them, or just --

10 MR. VILLEGAS: I'm speaking for our
11 chamber, but I was sharing with you that that's their
12 position also.

13 MR. BENDERSON: Okay.

14 Mr. Randy Yorke, Vice President, Global
15 Consultants, Inc.

16 MR. YORKE: Good afternoon. I'd like to
17 thank you for this opportunity to give a few comments.
18 As you stated, my name is Randy Yorke. I'm vice
19 president Of Global Consultants, Inc., commonly known as
20 GCL.

21 We are an information technology company.
22 I'm currently based out of Dallas. We are a certified
23 minority company both by NMSDC, and we're recognized by
24 the Dallas/Fort Worth Minority Business Council.

25 I'm hear to speak on behalf of a lot of

1 small companies that we do business with. As we have got
2 many who we see that really need your support and your
3 help in growing and increasing in an ever-competing
4 market, and in an ever-increasing merging market in which
5 not only the clients, but also our competitors and their
6 competitors continue to grow and grow and grow, and the
7 small businesses continue to struggle to make some of
8 those growths happen.

9 We wish to formally state for the record
10 that we support and would support the SBA in changing
11 size standards for federal government in awarding
12 contracts to small and minority-owned businesses. We
13 would support a tier structure, and we strongly support
14 the MS -- NMSDC and the minority business subcommunity
15 size standards for 5-10-5 role, which was also brought up
16 earlier. We would like to also submit that model as part
17 of our testimony.

18 We think that allowing companies of
19 similar tiers and sizes to compete makes more business
20 sense by allowing them to grow through the tiers, and
21 actually creating a situation in which they can
22 continuously grow and show movement up through growth and
23 then mentor others.

24 We currently have close to 200 small
25 businesses that support our business, and we desperately

1 want to see them grow. We work very hard with them, but
2 we need their competitiveness to increase, and we need to
3 see them also grow. So we support that particular
4 situation.

5 We believe that this can be developed by a
6 monitoring system that will make sure that at least 50
7 percent of the contracts would go to the lower tiers, and
8 ensure that within those lower end, that they will be
9 able to increase up, and that that can be monitored, and
10 supported, and pushed so that all the dollars do not go
11 to the larger end, but to the smaller size so that they
12 go from the 50 to the 500 and can go up through a tier
13 system instead of 50 having to compete against a 500,
14 which cannot happen.

15 So I'd like to thank you for this
16 opportunity to give this point of view, and thank you.

17 MR. BENDERSON: Are you advocating that
18 there be -- when you say tier, would it be like small
19 businesses set-asides based on size of maybe three
20 tiers -- three types of set-asides for small business?

21 MR. YORKE: Yes. And we would definitely
22 propose that, you know, dollars be set aside so that as
23 companies, especially in information technology, they can
24 grow so very fast in some cases. And other companies
25 we've seen that have been at this exact same tier for a

1 decade, and they can't get out of there.

2 And unless they get support from the SBA
3 from other information technology companies and that are
4 different clients to grow up, they get stuck and they get
5 caught in the middle.

6 They aren't big enough to take on large
7 contracts and, therefore, they don't -- aren't able to
8 grow. So they have to deal with companies such as us to
9 try and actually build their company as they can. And
10 instead of getting 50 or 100 placements, they deal with
11 ones and twos or threes. That does not promote the
12 growth that they need, nor the competitiveness of the
13 market.

14 MR. BENDERSON: Well, what do you
15 think the -- let me ask one more question. Why do some
16 grow very quickly and some grow slowly? I mean, do you
17 have any opinion on that? Is it management? Is it --

18 MR. YORKE: A lot of it deals with
19 relationships and who they know. And I can say that just
20 because I used to come out of one of the very large
21 organizations, so I've seen \$4 million companies go to
22 \$30 million companies in less than a year. It's rare.
23 It does not happen that often. Those who have
24 relationships and connections do; those who do not have
25 that don't. The SBA can help level that field and allow

1 for uniform growth through the whole thing.

2 MR. BENDERSON: Okay. Any other
3 questions?

4 MR. JORDAN: No. Thank you.

5 MR. BENDERSON: Thank you very much.
6 Thea Walker, T3 Product & Service
7 Solutions.

8 Ron Bays, CEO, Mid-Cities Home Medical.
9 Dianne Ferguson, President, Business
10 Control Systems, LP.

11 Leonel G. Gutierrez, MCCR.

12 Don McKneely, Publisher & President
13 Minority Business News.

14 George Wong, President of Applied Data
15 Resources.

16 Bob Stewart, General Manager, Spot Cooling
17 Systems, Inc.

18 Arturo Violante.

19 Connie Luthy, Medical Product Innovation.
20 You're next.

21 UNIDENTIFIED SPEAKER: Do you have
22 Dr. Robert Gracy?

23 MR. BENDERSON: Who?

24 UNIDENTIFIED SPEAKER: Dr. Robert Gracy.

25 MR. JORDAN: Yes, Mr. Gracy. We have your

1 name from earlier.

2 MR. BENDERSON: Do you want to speak?

3 DR. GRACY: Sure.

4 MR. JORDAN: Yeah. We had that for this
5 morning. Robert Gracy, Technology Business Development?

6 DR. GRACY: That's correct.

7 Thank you, gentlemen. My name is
8 Robert Gracy. I am the associate vice president for
9 Research & Biotechnology Development at the University of
10 North Texas Health Science Center in Fort Worth. And in
11 that position, I -- I am intimately involved in medical
12 school spin-off companies and the kind of things that
13 develop from our research programs.

14 Also, at the -- at the local level, I am
15 on the Board of Directors of TECH Fort Worth, which is a
16 business incubator which takes companies that come either
17 from academic centers or from elsewhere and -- to get
18 them started in these kinds of programs. And we
19 interface directly with SBIR and STTR programs.

20 At the regional level, we have what is
21 called BioDFW in this region. You may have heard that
22 from other people. But this is a regional program
23 including the entire area in the arena of health
24 sciences, life sciences, biotechnology, pharmaceutical,
25 and medical device industries. And we work closely with

1 both the Dallas Chamber and Fort Worth Chamber and other
2 chambers in the -- in the region here in getting
3 companies up and going.

4 At the state level, I have also served on
5 the Board of Directors for THBI, the Texas Healthcare
6 Bioscience Institute, and have been on the Governor's
7 Council for developing biotechnology for the state.

8 In all these positions, we really have
9 been asking the questions that you are looking at today,
10 is how do we get innovative small companies up and going.
11 And it's been a big concern for us throughout the
12 state -- on the state level down to the regional and
13 local levels.

14 And I'm really here to address primarily
15 the second issue on your docket, and that is the -- the
16 matter of venture capital ownership. In the area of
17 biotechnology -- and when I say biotechnology, I mean
18 pharmaceutical, biotech, medical devices, and all those
19 health care areas.

20 This is an area that is extremely
21 expensive to get going. It is also an area that is very
22 slow because we work through the FDA. We have a lot of
23 regulatory barriers that we have to go through in proving
24 not only safety, but efficacy. And so any start-up
25 company that deals with any of these areas has a large

1 time frame expense and a large money expense.

2 And so from that standpoint, I think
3 biotech, in that context, has the -- has the longest lead
4 time and the most expensive road ahead of it in taking
5 discovery -- what we would like to say is discovery to
6 the marketplace or discovery to the bedside, in terms of
7 helping people.

8 So SBIR grants and STTR grants have been
9 major, major, and will continue to be, a major importance
10 to getting these things off the ground. But alone -- in
11 this industry, and it's the one I'm speaking to today --
12 in this big industry, SBIR can't do it alone, and we do
13 need to have venture capital. We need to have angles and
14 we need to have other folks investing in the ability to
15 get these off the ground and through those barriers that
16 I just mentioned.

17 So I would urge you to reconsider the
18 issue regarding the participation of venture capital
19 participation in the SBIR programs, and to include and
20 allow them to be involved in these kinds of ventures
21 where they play an extremely important, critical role.

22 Now, finally, let me just say on the first
23 issue that you -- that you address, and that's the size
24 of the companies, most of the CEOs and people that we
25 work with -- and we've looked at this over the past

1 several years -- indicate that as one gets a company --
2 as one is fortunate enough to get a company off the
3 ground in the life science areas, when you get into the
4 areas of manufacturing -- and one must maintain a
5 research component to be competitive -- once you include
6 manufacturing and research in this, you're quickly over
7 100 folks involved.

8 And as some of the other people have said,
9 when you look at outsourcing and all the components
10 there, I think it would be very restricted to minimize
11 that to 100 employees. And so we -- we urge you to keep
12 that level at the 500 or some higher level.

13 So in conclusion, I would just say, No. 1,
14 the program that you're dealing with -- and I can't say
15 enough in thanking you and applauding what you're doing
16 coming around and talking to the folks here. SBIRs and
17 STTRs are extremely important when you look at these
18 kinds of developments that we have the opportunity to
19 bring up.

20 And it's not just an economic issue. It's
21 a health issue, and as our population is growing older,
22 it is going to be a more and more important issue to us,
23 and I think we all recognize that.

24 So I applaud the SBIR, STTR program and
25 everything that we -- you're doing in that. I say that

1 in regard to this area, the VCs and those areas are
2 extremely important because it's a long road to go. It's
3 extremely long to get through those regulatory -- and
4 they're appropriate regulatory barriers for safety and
5 efficacy. I'm not saying that they shouldn't be there.
6 But they're there, and they do take a long time and a lot
7 of expense. And we need the corporate venture side to
8 partner on that.

9 And, again, I think that if you look at
10 this carefully and see that in these kinds of companies
11 we do need -- we don't need to restrict them to under 100
12 or some level such as that.

13 Again, I thank you for your time and being
14 here.

15 MR. BENDERSON: Are you advocating the
16 SBIR that just for the medical biological, or just across
17 the board?

18 DR. GRACY: Well, I'm -- I'm -- that's the
19 area that I speak to. I think it probably does hold for
20 other areas. I speak for the life science area,
21 specifically, because we have to go through the barriers
22 of the FDA regulations.

23 If you take a biotech company in the life
24 span before it becomes viable, it's the longest of any
25 type of company. So I'm speaking really to them. The

1 other areas may have similar issues, but that is not what
2 I'm speaking to.

3 MR. BENDERSON: And also on the employee
4 size standards, you don't want any size standards, or you
5 didn't like a 100, but 500 -- I mean, what's the standard
6 you're after there?

7 DR. GRACY: Well, I think when we talk
8 about small businesses, we see a lot, of course, that are
9 below 100. But we see that number as being a -- sort of
10 at the interface. And I think 500 is a reasonable
11 number.

12 Once a company starts its manufacturing,
13 puts into place some research components, they're going
14 to quickly get, you know, two, three, 400 people in there
15 and still be a start-up company.

16 So, again, I'm speaking really for the
17 life science companies.

18 MR. BENDERSON: Right. Thank you.

19 MR. JORDAN: Yeah. I have just one
20 question. You talk -- I believe you talked about
21 spin-offs to medical schools?

22 DR. GRACY: Right.

23 MR. JORDAN: Are they for profit?

24 DR. GRACY: Sure.

25 MR. JORDAN: They're for profit. They

1 would have to be for the SBIR Program.

2 DR. GRACY: Sure. Correct. Absolutely.

3 MR. JORDAN: I just wanted to make sure I
4 understand you correctly.

5 DR. GRACY: Absolutely.

6 MR. BATEMAN: Doctor, do you see this as
7 the greatest barrier to small businesses, or are there
8 other tangents?

9 DR. GRACY: Well, we have a lot of
10 barriers in moving this ahead. I think in Texas, we've
11 not -- I mean, I think you've probably heard this from
12 other folks -- we've not taken advantage of the SBIR,
13 STTR programs as well as we could, and that's probably
14 our fault. It's not a problem with the program. I think
15 that it's an exceedingly good program.

16 We are involved in the medical school not
17 only in seeing spin-offs go that direction, we are also
18 involved in reviewing these applications that come in to
19 the medical area. So we see it from both sides.

20 And I think this program is an exceedingly
21 good program, and I don't have much to advise you to do
22 other than go ahead and get more monies behind it and
23 more support behind it. But I think that to restrict the
24 program by restricting VCs and other people, particularly
25 in these areas that are extremely high cost and long

1 term, I think we're very, very much hurting us.

2 And I think restricting it to 100 also
3 would hurt us. And I think, you know, by taking these
4 things into consideration, I don't think it in any way
5 hurts smaller businesses in any other areas as well. So
6 that's really what I have to say.

7 MR. BENDERSON: Thank you. Did you want
8 to speak now, young lady?

9 MS. DOWLING: Good afternoon. My name is
10 Meredith Dowling, and I'm the Director of Technology for
11 the Greater Dallas Chamber. And Greater Dallas Chamber
12 is -- actually oversees 12 counties, so we really oversee
13 a lot of areas. We have 3,300 businesses that we
14 represent as well as their employees.

15 As a 501c6, we do take legislative
16 positions. And within the Greater Dallas Chamber,
17 separate from the governing department, we actually have
18 a Technology Business Council. So we specifically look at
19 issues that affect technology and life sciences companies
20 and the industries within these 12 counties.

21 We have recently taken a position on the
22 SBIR eligibility for the venture capital. As recent
23 changes in the Small Business Administration's
24 interpretation of the eligibility standards, SBIR grants
25 disqualified many start-up or early-stage companies and

1 biotech companies. The -- this interpretation excludes
2 the terminology as individuals being 51 percent of a
3 company now excludes venture capital.

4 So the main concern that we have had,
5 obviously, on the technology and life sciences field is
6 the fact that if any of you are familiar with the grant
7 process, in general, you apply for the grant and normally
8 whether it's the Department of Education or it's a
9 foundation, they're also wanting to know what other
10 support you have. So it's kind of the balance of, well,
11 why should we invest in you? What's -- who's already
12 invested in you?

13 So for these early-stage companies, it's
14 very difficult if -- you know, to get the venture capital
15 funding if you don't already have the federal funding or
16 other kinds of funding and vice versa.

17 So the Greater Dallas Chamber's Technology
18 Business Council urges Congress to restore the
19 eligibility for SBIR grants to venture capital-backed
20 start-up companies. We recently were also in DC as part
21 of the BIO fly-in to speak with members of Congress on
22 this issue as well.

23 As someone who's been in the Dallas/Fort
24 Worth area for about a year and a half after relocating
25 from southern California, I can definitely attest to the

1 fact that companies here in the Dallas/Fort Worth area
2 really have not been applying for federal funding through
3 the SBIR and STTR funding like they have in other states.

4 That's something that we've been working
5 on trying to encourage our businesses. As a recent --
6 most recent example, we had an innovation investment form
7 in which we highlighted some small companies that we
8 worked with through Phase Zero program, which was just
9 grants of \$3,000 to help them even learn to apply, and
10 get them ready for the politics involved, and learn about
11 the STARTechs and the INTECHs and the TECH Fort Worth,
12 and the university systems, and the business services
13 here.

14 And at the event, some of the companies
15 that wanted -- there were VCs there as well that said we
16 didn't even know you were here, so we didn't know you
17 were working on defense and security programs or biotech
18 medical device and things like that.

19 So you can already see -- I mean, the good
20 news is, it's starting to work, what our efforts are
21 trying to do, which is put everyone together, the
22 universities, the VC, and the entrepreneurs in what's a
23 very large region.

24 Dallas/Fort Worth is huge. And, you know,
25 geographically, everybody has their own initiatives

1 within the city. So it's something that we're trying to
2 support. We'd like to be able to see that we can
3 continue to go forward with this.

4 It would be a shame if at some point this
5 company that receives a Phase Zero actually was awarded
6 an SBIR grant, and that same venture capital firm that is
7 really a local person who's been here forever, who was
8 born and raised here, would like to actually go ahead and
9 fund them as well, but then there would be some kind of a
10 conflict.

11 So it's really just a percentage that
12 we're looking at. I think there's a lot of companies --
13 the -- the interpretation has changed a bit, so there's
14 companies that have already gone through the system that
15 now are just waiting in limbo. So we urge you to
16 consider this.

17 MR. MONTES: When you say it's really the
18 percentage we're looking at, can you --

19 MS. DOWLING: Well, the key is, is that
20 you have to be 51 percent --

21 MR. MONTES: Right. And are you
22 suggesting lowering that, raising that, or just keeping
23 that pretty much where it's at?

24 MS. DOWLING: Well, we would really like
25 for you guys to reinterpret what constitutes individuals.

1 I think the issue of it having venture capitalist have
2 been included in that for a while, and now are no longer
3 included in that.

4 MR. MONTES: So you're saying keep it at
5 51, but relook again at what constitutes individuals?

6 MS. DOWLING: Yes. Unless there was a lot
7 of study done and a better percentage of a small -- you
8 know, if there is issues from other groups, which I'm
9 aware of, not wanting to make sure that some companies
10 get too much of everything, then you could reinstitute a
11 smaller percentage. But it's really just in the
12 interpretation.

13 MR. BATEMAN: Well, it's a control issue.
14 That's why we have to keep a majority/minority, so that's
15 a tough issue.

16 MS. DOWLING: And, I mean, I think that
17 you can understand that we wouldn't want all of these
18 companies all of a sudden being owned by VCs, and now
19 it's out of the hands of, you know, federally-regulated
20 dollars or other components. But the issue is for the
21 early-stage companies to be able to get the funding to do
22 what they need to do to reach commercialization, which is
23 a huge issue, especially for this region.

24 So I think that if it is more complicated
25 than that, then that's fine. It's just -- it's kind of

1 been in limbo, and nobody has been really addressing it.
2 So if stipulations on what ownership means as far as VC
3 and, you know, individual investments, or federal
4 regulations, or federal funding, then maybe that could be
5 looked at, but...

6 MR. JORDAN: With your example, small
7 local VCs, the SBIR companies may still be eligible.
8 It's when you have a single VC that has more than 51
9 percent, what happens is they are considered affiliated.

10 MS. DOWLING: Right.

11 MR. JORDAN: This affiliation between the
12 participant and the SBIR -- SBIC -- the VC -- there's too
13 many alphabets here -- the venture capital company.
14 Therefore, they're affiliated with the venture capital
15 company plus the other company that controls. If they're
16 really small, and they still may be under 500 employees,
17 and there might not be a problem.

18 It's when you get in the larger ones that
19 you have a problem. Or a new VC, or if you have multiple
20 VCs that put them over the 51 percent, then you've got
21 neither the 51 percent ownership by the individuals, nor
22 do you have a single entity owning 100 percent -- 51
23 percent.

24 MS. DOWLING: Well, we've worked with a
25 lot of companies that -- and maybe this is, you know,

1 also a bigger problem -- but that -- I mean, they have
2 been denied per their percentage of venture cap funds
3 that don't fit that model.

4 MR. JORDAN: It's only in the last couple
5 of years though.

6 MS. DOWLING: Right.

7 MR. JORDAN: It's always been the rule
8 though.

9 MS. DOWLING: I know.

10 MR. JORDAN: It's just that now it's being
11 enforced that someone called it to our attention.

12 MS. DOWLING: Right.

13 MR. JORDAN: And that -- they never should
14 have been eligible. Yes, they received the funds -- the
15 SBIR funds at a time when they were also controlled by
16 VCs, but they should not have been. They were not
17 eligible. Now, we have been asked to consider whether we
18 should exclude VCs from affiliation. That's what we're
19 asking, and we're hearing both sides.

20 MS. DOWLING: Right.

21 MR. BENDERSON: Thank you very much.

22 MR. JORDAN: Thank you very much, yes.

23 MR. BENDERSON: Is there anybody else that
24 wants to speak? Okay.

25 MR. PALMA: Thank you for the opportunity

1 to speak today. My name is Victor Palma. I'm the
2 president and CEO of Ecological Communications
3 Corporation or ECOMM. We're an 8(a) firm --
4 environmental consulting firm out of Austin, Texas. And
5 we do about 40 percent federal work, 40 percent other
6 governmental work, about 20 percent private.

7 I'm also currently the Minority
8 Businessman of the Year, Small Businessman of the Year
9 for the SBA San Antonio District, and I have also been
10 asked to speak here on behalf of Tech Group 886. Tech is
11 an international network of CEOs that represents a
12 variety of industries.

13 I'm actually very happy to follow the last
14 two speakers, because I do have a comment on something
15 that they're looking for that would directly affect us.

16 Let me start with regarding the size
17 standards. It's already been said today that 98 percent
18 of the companies in the U.S. have 100 people or less.
19 And I guess I would ask, so why are you even considering
20 small businesses that have more than that, that, you
21 know -- everyone can't be a small business because
22 everyone is not a small business.

23 And if -- you know, we're trying to get
24 closer to 100 percent here, essentially what we have
25 is -- well, basically, if everybody's a small business,

1 nobody's a small business. So I clearly say if 98
2 percent are governed by 100 people or less, that seems
3 like a pretty good coverage to me.

4 Secondly, it's also been stated today
5 that -- typical of our industry, there's been several
6 people from the environmental consulting field here
7 today. They mention that as kind of an industry
8 standard, revenues equate to about \$100,000 per employee.
9 Given a size standard of \$6 million a year, that would be
10 anywhere from 40 to 60 employees in that company.

11 When that gets bumped up to 500 employees,
12 you end up having a \$6 million company competing with a
13 50 or \$60 million company, and I will contend, certainly
14 in our industry, that a 50 or \$60 million company is no
15 longer a small business.

16 The final thing is, lastly, you know, it's
17 a little tough -- it's tough enough on small businesses
18 right now with the current standards without making
19 things tougher. And this kind of relates to the SBIR
20 information.

21 Currently, there's a NAICS code for
22 environmental consulting. It's 541620. And it's --
23 that's exactly what it's for, environmental consulting.
24 It has a \$6 million a year size limit.

25 But we see more and more federal agencies

1 lately using NAICS code 541710, which is for research and
2 development in the physical engineering and life
3 sciences. And I think that clearly was developed for the
4 type of research they're talking about, medical research,
5 biomedical. But it's been used for -- for contracts that
6 are strictly environmental contracts.

7 They're making the switch because the
8 NAICS code has a 500-employee standard, not a \$6 million.
9 That has effectively, in the last couple of years -- and
10 this has happened in Texas, New Mexico, and Arizona --
11 put us, at what I consider a true small business,
12 competing with 50 and \$60 million a year companies.

13 So I caution you on looking at just a size
14 standard. Even -- even -- there's good uses for certain
15 industries, but it does, in fact, affect other people
16 when they're, what I think, are misused.

17 So given those constraints -- and, again,
18 this is not sour grapes, by the way. I should say that
19 our firm just won a \$10 million contract with Fort Hood,
20 Texas to do environmental consulting, to do that
21 archaeology. We just won that in November.

22 So I'm kind of -- I want to come up here
23 and say this isn't one of those things where we never get
24 contracts. We do get contracts, but there still needs to
25 be -- there's plenty out there that are being misused.

1 With that in mind, I guess I would like to
2 finish up by saying I would like -- personally like to
3 see, as others before me have stated, a size standards
4 based solely on gross income or revenue based, and not
5 the number of employee base. I think that gives a fairer
6 per-industry evaluation rather than the number of
7 employees.

8 And I'm happy to take any questions.

9 MR. JORDAN: Just one clarification. In
10 government contracting, if there's an inappropriate -- or
11 at least in your opinion, an inappropriate NAICS code
12 being used for that procurement, you can protest that.

13 MR. PALMA: I realize that. But do you
14 realize, too, that --

15 MR. JORDAN: Because it must be -- the
16 contracting officer is required to use the code that best
17 describes the principal purpose of the contract, not the
18 one that has the size standards which they feel is most
19 appropriate.

20 MR. PALMA: I agree.

21 MR. JORDAN: And you can protest directly
22 to SBA, the Office of Hearings and Appeals.

23 MR. PALMA: But there is -- you know, as a
24 small business, there's a stigma to protesting as well.

25 MR. JORDAN: Right. You want the next

1 job, too.

2 MR. PALMA: Exactly.

3 MR. JORDAN: I understand, but that is a
4 point, and you can do that. You are aware of how to do
5 that?

6 MR. PALMA: Yes, I am.

7 MR. JORDAN: The SBA Office of Hearings
8 and Appeals can answer that.

9 MR. BATEMAN: Let me give you a little
10 better option.

11 MR. JORDAN: Okay.

12 MR. BATEMAN: We have field people that
13 call on these federal agencies, and it's on our Web site,
14 procurement center representatives.

15 MR. JORDAN: There's one sitting right
16 there.

17 MR. BATEMAN: Yes, there's --

18 MR. PALMA: Yeah, I know Paul.

19 MR. BATEMAN: Call him and say, I think
20 they've got this one off, and hopefully get it fixed.
21 That's another method.

22 MR. PALMA: The main thing is --
23 especially after the previous two speakers -- I think
24 there's clearly NAICS codes that are designed for certain
25 industry that are being misused for other industries

1 simply because the standard allows for bigger companies
2 to compete.

3 MR. BATEMAN: That's absolutely incorrect.

4 MR. PALMA: And someone else mentioned it.
5 It's not about being able to compete. Theoretically, we
6 can still compete, but we cannot win. And that's the
7 issue.

8 MR. BATEMAN: It's not fair.

9 MR. PALMA: Yeah.

10 MR. BENDERSON: Thank you very much.

11 MR. PALMA: Thank you.

12 MR. BENDERSON: We'll hear from
13 Richard Owens, Rothe Enterprises, Inc.

14 MR. OWENS: I'm Rick Owens or Richard
15 Owens, Vice President for Rothe Enterprises, which is a
16 woman-owned, HUBZone small business based out of
17 San Antonio. We have two major divisions. One is the IT
18 arena; the other is the engineering and manufacturing.

19 In the IT area, it's mostly computer
20 facilities management running network control centers for
21 the military. The engineering and manufacturing, we have
22 been doing work at Johnson Space Center building
23 mock-ups -- full size mock-ups for the shuttle, for the
24 space station, and now we're going to start doing the
25 Explorer.

1 We originally had that as a separate
2 contract; however, it got bundled, so we lost it. That's
3 a 500 position. Proposed changes could really hurt us
4 there. I think that we all know that in order to run a
5 facility this large, to set it down to a 100-man position
6 would not work.

7 A lot of computer facilities are larger
8 than that, and that's what allowed us -- when they
9 changed it to a \$21 million size standard, it allowed a
10 small business to go after that. Which prior, it had
11 been run by IBM, Raytheon. That allowed us to get into
12 that arena.

13 There are quite a few HUBZoneIT
14 corporations out there. We have the network control
15 center contract at Columbus Air Force Base, which was a
16 HUBZone set-aside. We've competed twice; we've won both
17 times. And there have been adequate numbers of HUBZone
18 companies competing for it. So it's out there. If you
19 take it away, you're killing two programs, actually. It
20 would be killing the small business end, but also the
21 HUBZone program.

22 We are very proud of the fact that instead
23 of having 35 percent HUBZone residence, we have 60
24 percent. We've had to aggressively approach that. A lot
25 of it is training kids actually in high school that are

1 in danger of dropping out. We show them a trade and say,
2 look, if you hang in school, we'll help you get certified
3 as a computer technician. Okay.

4 We have not been 100 percent successful
5 with that, but I would say probably 30 percent of the
6 people that get involved continue. And what that allows
7 them to do is get a job that pays a lot more than minimum
8 wage. And what's the program for -- I'm sorry -- that's
9 what it's for, is helping people living in those areas
10 move up.

11 Now, there is a twist to that. A lot of
12 times we'll train them so well, they'll get a job and
13 move out. That's inherent. But we are still producing a
14 person who would never have gotten into that career if
15 they hadn't had the push or an opportunity to do that.

16 The engineering and manufacturing support,
17 like I said, we have been supporting mock-ups. We have
18 found out that when they bundled it, the sub that it was
19 for, the main prime that got the contract, is not doing a
20 very good job at all. And they're looking at stripping
21 it out probably next year and putting it back out on the
22 street.

23 If we change the size standard for that
24 area, or for that knack, it would take us out as well as
25 quite a few other small businesses, and there is no way a

1 100 size standard can support that. So, basically, we'll
2 never be stripped out. You'd have to stay within a
3 bundled package. Okay. That's what I have to say about
4 those programs.

5 I think we need to maintain the \$21
6 million size standards for IT. I think there is a need
7 for a 500 number. I think 100 is not enough. A lot of
8 smaller areas, yes, but when you get into the more
9 involved engineering and manufacturing, 100 people will
10 not do it. We've had surges of over 500 at times. We've
11 really pushed it, but things occurred.

12 When the shuttle blew up, we were directly
13 involved. And, actually, we fabricated the wing that
14 they took to Southwest Research and blew a hole in it.
15 And we did that very fast. We had to. They wanted to
16 see exactly what it could be. We couldn't have done that
17 if we were a 100-man operation. We just wouldn't have
18 had the resources.

19 The other thing, in my old life in the Air
20 Force, I was a research associate. And part of that was
21 monitoring SBIRs. And that has been a problem because we
22 were in medical research. There has always been a
23 problem of getting enough money to these people. And
24 that was through the AFO NAICS.

25 Support the fact that we need to look at

1 breaking probably the biotech out and make it a separate
2 portion of SBIR because of that fact. We need to look at
3 it, because it takes 10 years at least to get a product
4 out there. And we kind of shackle these research
5 companies by not allowing them to get the resources they
6 need. We're defeating ourselves. And especially in
7 today's world, we need to be able to expand our
8 biotechnology.

9 The tier, I don't agree with -- and I
10 should say, we. My company does not agree with that. We
11 think it's another way of holding people back. We're not
12 allowing people to mature at their pace.

13 And the grandfathering, I don't think that
14 will work because of the fact, yes, we would still get
15 those large businesses that will remain as a small
16 business. And maybe 1,500 is too high.

17 But I think it needs to be looked at by
18 each NAPCS Code because there's a reason why it was done
19 in the first place. If they -- you can justify the
20 1,500, do it. If you can't, let's change it. But don't
21 knock it down to 100. You're going to kill a lot of good
22 small businesses.

23 That's all I have to say.

24 MR. BENDERSON: Well, thank you very much.

25 Any questions?

1 MR. PALMA: Thank you very much.

2 MR. BENDERSON: Who is left that wants to
3 say something?

4 MS. PETER: Well, I had not planned on
5 doing this. Someone else from our industry was supposed
6 to be here. And I would have had this all planned.

7 MR. BENDERSON: Now, this is Elaine Peter
8 of Maple Office Supply.

9 MS. PETER: I've owned Las Colinas Office
10 Products for over 20 years, and we merged with Maple
11 Office Supply about two years ago. We are a small
12 business. There's only about seven employees, and we're
13 all women or minority people.

14 Having been in this business, when I first
15 started out, everyone was on the same ground level, but
16 then the big corporations came in. The big guys came in
17 and they changed our industry tremendously. But still,
18 there is areas that we could compete against the big
19 guys, a lot of corporations, and state facilities,
20 national facilities.

21 We're required to do so much with a
22 minority HUB certified business small business. I
23 realize that the bottom line is cost, and someone is not
24 going to buy from me unless I have a very competitive
25 price. Can my prices be lower than the big guys? No,

1 not in all instances, but we can be competitive. They
2 buy on a much, much larger scale than what I do, but I
3 can still provide the service.

4 Our office supply catalog is the largest
5 office supply catalog in the industry. That includes any
6 of the superstores. We are supported by a wholesaler
7 that has for many, many, years -- United Stationers --
8 supported the independent dealer. And I enjoy
9 business -- doing business with the State and other
10 corporations, but probably -- let me explain to you what
11 is happening now in our industry.

12 The large corporations are partnering, and
13 I would assume this is what you're meaning by
14 grandfathering clause -- the large corporations are
15 partnering with some smaller businesses or women-owned
16 businesses. And basically, what it entails is that the
17 Web site to that large corporation is in the frame for
18 that company, but it goes through the large corporations,
19 and it filtered down through the large corporations, and
20 delivered even by the large corporations, in some
21 instances.

22 Basically, what that dealer has become is
23 a salesperson for the large corporations. Now, the large
24 corporations have liked this because now they've got
25 their percentage that they were going to try to designate

1 to the small businesses. The large corporation is
2 happy -- or office supply company is happy because they
3 haven't lost that business. They're able to go in and
4 get that business now that they didn't have in the past.

5 I don't want to sound like sour grapes,
6 because I know we have got to compete against this. I
7 thought, well, do I really want to go into the large
8 corporations that are office supply companies and try to
9 partner with them?

10 But we have been set aside as an
11 independent office supply dealer, been there for 30
12 years. We offer a service to our customers. It's not
13 delivered by any other truck except our truck. We've put
14 a lot in -- in setting our business aside, and it just
15 really goes against my grain to start partnering with a
16 large corporation.

17 But I lost a big account for one reason,
18 and I called them and I said, you know, what's happened?
19 I -- and they have partnered with another small business
20 with a large corporation, and I wasn't in the loop in it
21 at all.

22 And it was very frustrating to me. It had
23 nothing to do with price. It had nothing to do with
24 service. It enabled them to simply meet their quota
25 without having to go through the rigmarole of doing

1 business with a small business.

2 That's all I wanted to say.

3 MR. BENDERSON: Well, thank you. Any
4 questions?

5 MR. JORDAN: Thank you very much.

6 MR. BENDERSON: Next.

7 DR. LUTHY: I'm Connie Luthy, Medical
8 Product Innovation. Do I need to put this on?

9 MR. BENDERSON: Yeah. Why don't you put
10 it on.

11 DR. LUTHY: Okay. I'm Connie Luthy. I'm
12 an inventor and medical product developer working at the
13 intersection of Technology Development/Product
14 Development/New Venture Creation. For nearly 10 years, I
15 worked as a consultant helping start-up companies prepare
16 for funding. My specialty is new product development,
17 and I serve as Certification Director for the DFW Chapter
18 of the Product Development and Management Association.

19 I lecture in the Science and Technology
20 Commercialization masters degree program at George
21 Kozmetsky's IC2 at UT Austin and judge their Technology
22 Commercialization Competition each year. It's a
23 significant competition. The winner is awarded entry
24 into Austin Technology Incubator with a free year of
25 rent.

1 I also serve as the Life Science Screener
2 and Critiquer for the World's Best Technology conference.
3 This event is a national venture forum hosted by the
4 Federal Laboratory Consortium for Technology Transfer and
5 the National Association of Seed and Venture Funds, and
6 targets companies that have received in excess of \$1
7 million in federal funding.

8 I championed and organized the first SBIR
9 conference held in Dallas County. It was held in this
10 building June 10th, 2003 with Jim and Liv. The event was
11 sold out at 150 attendees, and we turned folks away at
12 the door.

13 Government funding can be a stage of
14 funding in the lifetime of a new venture. Jerry White,
15 Director of Caruth Institute for Entrepreneurship at Cox
16 School of Business at SMU, was my entrepreneurship
17 professor. He taught me that projects that should be
18 funded will be funded. As I develop funding strategies
19 for start-up companies, I must first determine the goals
20 of the entrepreneur.

21 My finance profess in that Executive MBA
22 Program taught me to fund short-term projects with
23 short-term money and long-term projects with long-term
24 money. Company funding must fit the entrepreneur and the
25 technology.

1 Becoming ineligible for SBIR funding by a
2 company can be due to growth, merger, acquisition, or
3 institutional public funding. Does that mean that the
4 company can no longer receive government grants and
5 contracts? Of course not.

6 For 2004, NIH had an Extramural Grant
7 budget of \$22.9 billion; 563 million of that was set
8 aside for the SBIR Program. Larger or
9 non-individual-owned for-profit companies are invited to
10 compete for the remaining 22.3 billion.

11 An SBIR-funded company becoming ineligible
12 is one of NIH's definitions of success. If you need help
13 finding these opportunities, subscribe to the NIH Guide
14 and search on your area of specialty, not on small
15 business, or contact me.

16 These grants are not intended to fund
17 corporate venturing. I am quite familiar with corporate
18 venture programs. Each year we have multiple teams from
19 profitable technology companies, such as IBM, Motorola,
20 Advanced Materials enrolled in the MSSTC program at UT
21 Austin.

22 I know the SBA employs economists, and
23 they can tell you that. Yes, changing the eligibility
24 requirements will shift the program towards lower-risk
25 technologies closer to market, and become more

1 geographically concentrated following industries and
2 areas of venture capital focus.

3 Yes, granting VCC exclusion from
4 affiliation will adversely affect the ability of small
5 business concerns without such access to private capital
6 to compete for SBIR awards.

7 Yes, the participation of firms owned and
8 controlled by VCC firms will ultimately create an
9 environment of multiple repeat award winners.

10 In the year 2000, as a result of my work
11 with BIO, I attended the U.S. Security and Exchange
12 Commission's Forum on Small Business Capitalization, an
13 invitation-only event limited to 150 attendees. I am
14 concerned about funding for medical inventions, but
15 realize that there will be special legislation required
16 to solve that problem.

17 Patrick Von Bargaen, Executive Director --
18 or then Executive Director for the National Commission on
19 Entrepreneurship spoke to us on the result of their
20 recent study High-Growth Companies: Mapping America's
21 Entrepreneurial Landscape.

22 The greatest single factor they discovered
23 that predicts entrepreneurial success in a community is
24 diversity. When individuals are rewarded for what they
25 accomplish, not where they went to school or whom they

1 know, the results can be astounding.

2 If the ownership provisions are changed to
3 allow SBIR awards to companies owned 51 percent or more
4 by large entities, we will lose the very diverse,
5 creative thinkers that have made and continue to make
6 this country the most entrepreneurial company in the
7 world -- country in this world.

8 The Small Business Administration should
9 not be held accountable for the problems of one industry
10 cluster. If there is a problem with funding start-up
11 companies developing medical products, it needs a
12 targeted solution. This is not the problem the SBA is
13 solving with their SBIR Program.

14 The NIH, Health and Human Services, and
15 Food and Drug Administration all have critical path-type
16 initiatives in place to study the problem of converting
17 the United States investments in scientific research into
18 medical products. They are highly motivated to let the
19 American people have access to new products resulting
20 from this investment.

21 Don't let BIO and MDMA and other trade
22 associations be lazy. Insist that they study, analyze,
23 develop solutions, and lobby Congress to pass the
24 solutions to their industry's problems.

25 Don't change a program that's worked well

1 for 20 years. Well-defined products get funded,
2 developed, approved, and change lives.

3 Thank you very much.

4 MR. BENDERSON: Any questions?

5 The diversity you're talking about, are
6 you talking about technical diversity, or ethnic
7 diversity, or...

8 DR. LUTHY: Well, the NCOE will be happy
9 to provide you a copy of their study, but I believe what
10 they discovered is, where they found a lot of race
11 diversity, they also found a diversity of funding
12 sources.

13 And it was in these communities -- well,
14 they looked at 394 communities in this country, and the
15 ones that were entrepreneurial -- and I can't tell you
16 right now what those measures were -- were successful in
17 developing entrepreneurial clusters.

18 The two things they found in common was
19 race and cultural diversity and a diversity of funding
20 options. And this is -- he went on from being the
21 Executive Director of NCOE to accept a position with the
22 SEC, so, I mean, I can -- so I can, you know, track him
23 down and get his more recent quote, but --

24 MR. BENDERSON: No, that's fine.

25 DR. LUTHY: But, yeah, it's why -- it's

1 why Houston is great in entrepreneurship and Dallas is
2 not, you know -- but the huge amount of international
3 diversity in Houston and diversity of industries.

4 You know, that's another thing. When you
5 end up with a geography where your employment base is
6 very narrow in industry focus down from that industry, it
7 has a devastating affect on the economy. Once again,
8 north Texas is a prime example of that.

9 So my point is, this type of funding is
10 only for a certain stage in a company's life cycle. VC
11 funding, IPO, big corporations, those are later stages,
12 and please don't mess with what's working.

13 There is something broken. It's related
14 to specific industries. There are government initiatives
15 in place to try to identify how those can be solved, and
16 I am involved in those. In late 2003, early 2004, both
17 HHS, NIH, and FDA made critical path initiatives all
18 directed towards, how can the American people benefit
19 from this huge investment we've made in medical research?

20 I mean, NIH's budget got doubled back in
21 the '70s. You know, yet there are no more -- (inaudible)
22 getting approved by the FDA. Well, this is a huge
23 problem. It's going to require a couple of years of
24 research to even discover the source of the problem and
25 figure out the solution. And it should not be up to the

1 SBA and SBIR Program to solve this problem.

2 So my humble opinion is that BIO -- and I
3 used to belong to BIO. I belonged to BIO for two years,
4 and then they got off on this warpath, and I said enough
5 of that. You know, they don't get it. And I've seen all
6 those form letters. I mean, some of them, I know the
7 people who signed at the bottom. And it's the same
8 letter. You know, I've read them off your Web site.

9 And I think MDA has a similar campaign
10 going. And, you know, they just look at your part and
11 say this is an easy source. Well, the companies that are
12 being deemed ineligible can apply for the other 97
13 percent of the budgets of these different granting
14 agencies and contractors, you know. It's contracts with,
15 you know, DOE and DOD. There's grants -- well, I only do
16 medical, so I'm not as familiar with those, but...

17 MR. BENDERSON: Okay. Thank you very
18 much.

19 DR. LUTHY: I'm passionate about this.
20 Can you tell?

21 MR. JORDAN: Thank you very much.

22 MR. BENDERSON: Are there any other
23 speakers?

24 MR. JORDAN: We want to make sure we don't
25 miss anyone who did register to provide testimony.

1 MR. BENDERSON: Well, thank you-all for
2 coming. It's been very helpful. And, hopefully, it will
3 lead to some improvements in size standards. Again,
4 thank you for coming.

5 (Hearing adjourned at 3:39 a.m.)
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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3
4 This is to certify that I, Sherry J.
5 McLaughlin, Certified Shorthand Reporter in and for the
6 State of Texas, reported by machine shorthand the
7 proceedings had at the time and place set forth in the
8 caption hereof, and that to the best of my ability the
9 above and foregoing 243 pages contain a full, true and
10 correct transcript of the said proceedings.

11 Certified to on this the 13th day of July,
12 2005.

13
14
15 Sherry J. McLaughlin, CSR #6464
16 Expires: December 31, 2005
17 KEN OWEN & ASSOCIATES
18 801 West Avenue
19 Austin, Texas 78701
20
21
22
23
24
25